COMMONWEALTH OF PENNSYLVANIA

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July 22, 2026

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

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

Dear Secretary Homsher:

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

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

Respectfully submitted,

/s/ Harrison W. Breitman
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Enclosures

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

CERTIFICATE OF SERVICE

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

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

Dated this 22nd day of July 2026.

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Dated: July 22, 2026

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF THE
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I. INTRODUCTION

A. Procedural History

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

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

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

On March 9, 2026, the OCA filed its Notice of Intervention and Public Statement, and Answer in response to the Company's Petition. Also on March 9, 2026, the following parties filed Petitions to Intervene: Sunrise Airport Road LLC, Sunrise Forrester Road

LLC, Sunrise Franklin Road LLC, Sunrise Harlansburg Road LLC, Sunrise Hendersonville Road LLC, Sunrise McCurdy Road LLC, Sunrise Perry Highway LLC, Sunrise Sandy Lake Greenville Road LLC, Sunrise Sandy Lake Polk Road LLC, and Sunrise Springfield Church Road LLC (collectively, the Customer-Generator Coalition or CGC); Town Square Energy East, LLC (Town Square) and WGL Energy Services, Inc. (WGL) (collectively, Town Square). On March 10, 2026, Pennsylvania State University (Penn State) filed a Petition to Intervene.

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

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

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

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

On July 2, 2026, FE PA served a Joint Petition for Non-Unanimous Settlement (Settlement), which included the OCA's Statement in Support of Settlement. On July 10, 2026, the OCA, FE PA, CAUSE-PA, JSA, EGS Parties, CGC, Dimension, Constellation, RESA, WGL and Town Square filed main briefs. The OCA submits the following Reply Brief pursuant to the litigation schedule in this proceeding.

B. Non-Unanimous Settlement

The OCA incorporates the non-unanimous settlement section contained in the OCA's Main Brief and supports the Settlement, as discussed in the OCA's Statement in Support.[1]

C. Legal Standards

The OCA incorporates the legal standards contained in the OCA's Main Brief.[2]

D. Summary of Argument

FE PA's proposal to remove PJM Interconnection, LLC (PJM) charges for Network Integration Transmission Service (NITS) from pricing under the Supplier Master Agreement (SMA), like the treatment of these costs by other Electric Distribution Companies (EDCs), is reasonable. Contrary to RESA's assertions, a Fixed-Price Full-Requirement (FPFR) contract does necessitate the inclusion of NITS. Moreover, customers will be responsible for paying the costs of NITS regardless through a nonbypassable surcharge as proposed by FE PA. RESA's proposal that NITS be included in supplier bids creates a risk premium, which the suppliers would then necessarily account for in their bids, only further increases costs to customers. As a proponent of a rule or order, RESA failed to meet their burden of proof that charging NITS to customers through supplier bids results in just and reasonable rates.

Similarly, FE PA's proposal to continue using a Capacity Proxy Price (CPP) mechanism in FE PA's auctions in the event PJM does not conduct a base residual auction (BRA) is appropriate as future PJM capacity prices are uncertain. RESA's argument that

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[1] *See* OCA Statement in Support; OCA M.B. at 3.

[2] *See* OCA M.B. at 3-7.

customers pay a premium to suppliers to assume that uncertainty is unreasonable. The CPP is consistent with the Customer Choice Act, Act 129, Alternative Energy Portfolio Standards Act (AEPS), and relevant precedent, as it promotes competitive procurement, provides transparent cost recovery, and protects default service customers from paying additional premiums for uncertain costs that would need to be reconciled to actual market outcomes.

FE PA's proposal to classify non-residential default service customers according to their Maximum Registered Peak Load (MRPL) is supported by both record evidence and recent Commonwealth Court precedent. CGC's arguments to the contrary mischaracterize FE PA's proposal and unreasonably claims that the instant proceeding, in which FE PA proposed MRPL, is not the appropriate proceeding to determine whether FE PA can utilize MRPL.

JSA's and CGC's proposal to register negative to reduce the cost allocation assigned to customer-generators does not adequately account for whether customer-generators will actually provide those benefits during PJM peak capacity and transmission conditions. Assigning negative PLCs to customer-generators would increase capacity obligations, costs for other customers, and could disrupt fixed-price commitments that were previously negotiated.

JSA's argument that distributed generation helps address resource adequacy needs mischaracterizes the issue. Instead, the issue in this proceeding is whether customers of FE PA's small commercial class should unreasonably subsidize large customer-generators under the PTC Rider. The OCA's position is that requiring cross-subsidization to support customer-generators, which would occur in the absence of MRPL, is unreasonable. Furthermore, MRPL is supported by recent precedent and the Commission's regulations.

The Commission should reject JSA's, Dimension's, and CGC's proposals seeking lengthy and unsupported grandfathering periods. A 25-year grandfathering proposal is simply not the only equitable solution, as claimed by JSA. Moreover, a 10-year grandfathering proposal based on a prior settlement is neither reasonable nor based in precedent as settlements are not precedent. A two-year grandfathering period for MRPL is appropriate.

FE PA's Customer Referral Program (CRP) should be discontinued as it no longer fulfills any meaningful role in Pennsylvania's mature competitive retail market and suffers several design flaws. RESA's and Town Square's recommendation to continue FE PA's CRP is inappropriate as the CRP has already been discontinued in FE PA's previous DSP. Additionally, neither FE PA, nor the OCA, bears the responsibility of redesigning an EGS marketing program that no longer serves a meaningful public purpose.

FE PA's proposal to return customers to default service at contract expiration is reasonable and in the public interest as there is consumer harm resulting from automatic renewals into supplier contracts. Contrary to the arguments raised by RESA, Constellation, and the EGS Parties, FE PA's proposal does not violate the Competition Act, the Commission's contractual renewal regulations, is in no way "slamming", does not undermine competitive markets, and is consistent with the Commission's regulation and prior precedent. Additionally, contrary to Town Square's claim that FE PA is barred from seeking a waiver of Section 54.10(3) of the Commission's regulations, the Commission is permitted to waive its regulations pursuant to its statutory authority to rescind or modify its regulations or orders when the requested waiver is consistent with the public interest. FE PA satisfied all necessary requirements for this waiver.

The OCA similarly supports FE PA's proposal to require EGSs to obtain affirmative customer consent on a quarterly basis for residential customers receiving variable rate contracts. RESA's, the EGS Parties', and Town Square's arguments that FE PA's variable rate contract proposal is overly burdensome and discourages competition downplays the fact that, while customers may knowingly enroll in a variable-rate product initially, this does not mean that customers knowingly choose to remain on that product indefinitely as prices change over time. There is no evidence that repeated automatic renewals of variable-rate contracts provide meaningful consumer benefits. Reliance on other customer products that automatically renew is misplaced as electric service is fundamentally different because it is an essential service, and higher generation prices directly contribute to increased arrearages, collection activity, and the potential termination of electric service.

The OCA supports FE PA's modifications to its Purchase of Receivables (POR) program as FE PA's proposal does not eliminate customer choice. Instead, under FE PA's proposal, residential customers remain free to shop, select any licensed EGS, or remain with their existing supplier simply by affirmatively responding to the required notices. Under FE PA's proposal, EGSs can still charge rates above the PTC, offer innovative products, and serve customers within FE PA's service territory. Moreover, nothing in the Competition Act, Commission regulations, or prior Commission orders either requires that FE PA implements a POR or requires that the POR remains available on identical terms regardless of evolving market conditions or documented consumer harms.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Residential Class Default Service Products

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

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

The OCA maintains its support for the Company's proposal to remove NITS charges from the DSP VII FPFR products and retain responsibility for those charges, recovering the costs through a bypassable rider charged to default service customers.[3]

RESA argues that removing NITS and adding a CPP are a means to "redesign the wholesale default service product itself."[4] RESA prefers maintaining the existing procurement framework.[5] RESA alleges that the Settlement provisions removing NITS "has not shown that customers will be better served by assuming the risk themselves rather

[3] OCA M.B. at 10-12; FE PA St. 3 at 5.

[4] RESA M.B. at 14.

[5] RESA M.B. at 14-16.

than continuing to rely on competitive suppliers to forecast, manage, and absorb that risk through fixed-price, full-requirements contracts."[6]

However, Dr. Ogur explained that "[t]he risk still exists, but the risk premium is eliminated when wholesale suppliers do not have to take on the risk."[7] As such, the risk will always be there, but customers need not pay an additional premium simply because that risk is present.[8]

RESA further obfuscates matters and argues that the Company failed to justify the changes proposed.[9] RESA claims that even if removing NITS and capacity risk from supplier bids makes the initial auction price appear lower, that does not prove customers will be better off.[10] RESA asserts that the Commission must consider whether transferring those uncertain costs directly to customers creates greater costs or risks over time.[11]

However, RESA's framework is incorrect. OCA witness Ogur has explained that RESA is applying the wrong standard because the Commission is not approving a guaranteed price outcome; it is approving a process designed to procure default service competitively over time at least cost.[12] Dr. Ogur explains that this logic is further flawed through an example: if their rationale was applied to other aspects of default service, it would invalidate other Commission-approved procurement mechanisms, such as spot purchases, because spot prices also cannot be known in advance.[13] Customers should not

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[6] RESA M.B. at 19.

[7] OCA St. 1R at 9.

[8] *Id*.

[9] RESA M.B. at 19-20.

[10] *Id*.

[11] *Id*.

[12] OCA St. 1R at 8.

[13] *Id*.

be required to pay suppliers a premium simply because suppliers are assuming a risk that may no longer be efficiently managed through the FPFR structure.[14]

The Commission should approve the Company's proposal. Dr. Ogur testified that "NITS rates or costs are not hedgeable, so risk managers can only price the risk by including appropriate risk premiums in their fixed price offers."[15] Dr. Ogur also demonstrated that adopting the Company's NITS proposal eliminates unnecessary premiums while preserving recovery of actual costs, resulting in lower expected costs over time for customers.[16] Removal of NITS also reflects current market realities, as increased transmission investment has made NITS costs significantly more volatile than when they were originally included in FPFR contracts.[17]

As explained in the OCA's Main Brief, RESA's assertion is based on the erroneous premise that a contract cannot constitute a full-requirements contract unless it encompasses every PJM billing charge.[18] Dr. Ogur also explained that a contract can still be considered a "full-requirements" contract even if it does not include NITS costs.[19] NITS is a separate transmission charge, and leaving that charge out of the contract does not change the supplier's obligation to provide enough electricity to meet the customer's full load requirements.[20] Dr. Ogur testified: "These full-requirements contracts typically also include most other (than energy) PJM billing line items and other costs (e.g., distribution losses, AEPS Act compliance), but they do not need to include **all** such costs to be considered full requirements."[21]

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[14] *Id*.

[15] OCA St. 1R at 10.

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

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

[18] OCA M.B. at 10; OCA St. 1R at 4.

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

[20] *Id*.

[21] OCA M.B. at 10; OCA St. 1R at 4-5 (emphasis added).

The record also shows that current FE PA's FPFR default service contracts in DSP VI already exclude certain PJM billing line items these contracts.[22] The excluded PJM billing line items are Transmission Enhancement, Transmission Enhancement Settlement (EL05-121-009), Meter Error Correction, Expansion Cost Recovery, and Generation Deactivation.[23] Mr. Lacey agreed in discovery that the current DSP VI contracts are FPFR contracts,[24] and seemingly failed to respond to this argument in surrebuttal. Instead, RESA improperly attempts to reframe the issue by suggesting that the Commission must decide who should bear this risk and whether it is appropriate to shift that risk from knowledgeable market participants to retail customers.[25]

RESA's argument continues to overlook the distinction between paying actual NITS costs and paying a premium for suppliers to assume NITS-related risk. As Dr. Ogur demonstrated in the record, the Company's proposal does not shift or eliminate the underlying NITS risk; it simply removes the unnecessary risk premium that suppliers must otherwise include in their fixed-price offers.[26] Under the proposal, customers pay the actual NITS costs over time, without paying an additional premium for a risk that is not hedgeable.[27] Dr. Ogur further demonstrated that the Company's proposal eliminates these unnecessary premiums while preserving recovery of actual costs, resulting in lower expected costs for customers.[28] This approach also reflects current market realities, as significant increases in transmission investments have made NITS costs more volatile than they were when NITS costs were originally incorporated into FPFR contracts.[29]

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[22] OCA St. 1R at 5.

[23] *Id*.

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

[25] RESA M.B. at 16-19; RESA St. 1SR at 26.

[26] OCA M.B. at 11; OCA St. 1R at 9-10.

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

[28] *Id*.

[29] *Id*.

RESA also incorrectly asserts that approval of the NITS proposal contravenes the law.[30] The Commission's approval of the NITS bypass proposal is consistent with Pennsylvania's statutory framework governing default service, including the Customer Choice Act, Act 129, AEPS, and the principles articulated in *Coalition for Affordable Utility Services & Energy Efficiency in Pennsylvania v. Pa. PUC*, 120 A.3d 1087 (Pa. Cmwlth. 2015), *app. denied*, 136 A.3d 982 (Pa. 2016) (*CAUSE-PA*). These authorities require the Commission to ensure that default service is procured in a manner that balances competitive procurement, reliability, customer protection, and the provision of service at the least cost to customers over time.[31] They do not require the Commission to structure default service products in a manner that guarantees suppliers compensation for assuming every category of market uncertainty.[32]

As explained above, FE PA's NITS bypass proposal advances these statutory objectives by preventing customers from paying unnecessary risk premiums associated with embedding volatile and difficult-to-predict transmission costs into fixed-price FPFR products. As the OCA has demonstrated, the Commission already endorsed this approach in approving similar procurement structures for other Pennsylvania EDCs, recognizing that removing NITS from FPFR contracts avoids unnecessary costs while promoting rate stability.[33] The Commission should likewise approve the proposal to remove NITS as it is

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[30] RESA M.B. at 18, 22-25.

[31] OCA St. 1R at 4-8; OCA St. 1 SR at 4, 16-20.

[32] FE St. 2 at 4; OCA St. 1 SR at 20.

[33] *See Pennsylvania Universal Default Supplier Master Agreement, Duquesne Light Co.* at 102; https://www.duquesnedsp.com/Portals/0/SupplierDocuments/DSP_X_SMA.pdf (previously accessed on July 8, 2026); *PECO Energy Co. Pennsylvania Default Service Supplier Master Agreement* at 104 (Dec. 15, 2025); https://www.pecoprocurement.com/assets/files/1%20DSP%20VI%20RFP%20Rules%20Appendix%201%20-%20Uniform%20SMA_MAR%202026.pdf (previously accessed on July 8, 2026); *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program*

consistent with prior Commission precedent[34] and results in a more cost-effective default service portfolio for customers, while leaving EGSs to compete through their own products and offerings rather than through an inferior default service design. Thus, RESA's claim that removing NITS from default service contracts undermines full-requirements service is unfounded. The proposed structure preserves the supplier's full-requirements obligation while ensuring that transmission costs are recovered through an appropriate and transparent mechanism. RESA's requested relief should be denied.

C. Capacity Proxy Price

The OCA supports FE PA's proposal to use a CPP mechanism if the PJM BRA clearing price is not known for all months of the delivery period for an FPFR product, and the use of a true-up mechanism thereafter.[35] RESA incorporated its arguments and justifications in response to the NITS proposal as applicable to their arguments against the CPP proposal.[36]

RESA's arguments improperly conflate the existence of capacity cost uncertainty with a need for customers to pay a premium for suppliers to assume that uncertainty.[37] The record demonstrates that CPP does not eliminate capacity cost risk.[38] Rather, it eliminates the need for suppliers to embed the cost of managing that uncertainty into fixed-price FPFR

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and Procurement Plan for the Period June 1, 2025 through May 31, 2029, Docket No. P-2024-3047290, Joint Petition for Settlement Attach. A at 14, Attach. B at 13 (previously accessed on Aug. 27, 2024).

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

[35] OCA M.B. at 12-14.

[36] RESA M.B. at 24, 26.

[37] *Id*.

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

bids.[39] Where PJM capacity prices are not known for the entire delivery period at the time of an FPFR solicitation, requiring suppliers to include those costs in a fixed-price product necessarily requires them to estimate future market outcomes and recover a risk premium from customers.[40]

A CPP with a true-up mechanism appropriately addresses this issue by allowing customers to pay the actual PJM capacity costs once established, rather than paying suppliers an additional premium to assume a risk that is difficult to hedge and ultimately remains a customer obligation.[41] Accordingly, CPP with true-up protects customers from unnecessary risk premiums while preserving competitive procurement and ensuring that customers pay actual market-based costs.[42]

Thus, the Commission should approve the Company's CPP proposal with the true-up mechanism, as doing so provides a more reasonable and transparent approach by allowing customers to pay the actual PJM capacity costs once established, rather than paying speculative premiums for suppliers to assume a difficult-to-hedge risk.[43] While RESA attempts to show concern for customers by using the buzz words "least cost over time," Dr. Ogur refuted this argument clearly in this case[44] and the Commission should uphold the OCA's position regarding the same.

RESA additionally claims that the CPP as proposed is violative of various relevant laws, regulations, and statutory framework.[45] However, the Commission's approval of the proposed CPP mechanism with a true-up is consistent with Pennsylvania's statutory

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[39] *Id.*

[40] FE PA St. 2R at 10.

[41] OCA St. 1SR at 19-20; OCA St. 1 at 22; FE PA St. 2R at 10; OCA M.B. at 12-14.

[42] *Id.*

[43] OCA St. 1SR at 20-21.

[44] OCA St. 1 at 22-23; OCA St. 1R at 7-11; OCA St. 1SR at 19-20; OCA M.B. at 12-14.

[45] RESA M.B. at 24.

framework governing default service.[46] Indeed, the Customer Choice Act requires default service to be procured in a manner that ensures the availability of electricity supply at the lowest reasonable cost over time while balancing price stability, market conditions, and customer protection.[47]

Dr. Ogur also disproved RESA's assertion that the Company's proposed residential default service portfolio cannot be adequate and reliable because the contracts exclude NITS and include a capacity cost true-up mechanism is based on an incorrect interpretation of Section 2807(e) of the Public Utility Code.[48] Dr. Ogur explained that the statute requires a prudent mix of contracts designed to ensure adequate and reliable service; it does not require each individual contract to independently guarantee reliability.[49] Rather, the contracts must work together with other services obtained by FE PA to satisfy that obligation.[50] Dr. Ogur again explained that the Commission has confirmed his interpretation by approving similar default service structures for other Pennsylvania EDCs that exclude NITS and include capacity cost true-up mechanisms.[51]

The CPP mechanism is not violative of law. Rather, the CPP with true-up is consistent with Act 129's emphasis on ensuring that default service customers receive least-cost service through competitive procurement processes.[52] The mechanism does not replace competitive markets or guarantee a particular price outcome.[53] Instead, it improves the procurement structure by preventing unnecessary supplier premiums for assuming risks

[46] OCA St. 1 at 20-23; OCA St. 1R at 7; OCA St. 1SR at 16-17.

[47] FE PA St. 3R at 2; 66 Pa.C.S. § 2801.

[48] OCA St. 1R at 7.

[49] *Id.*

[50] *Id*.

[51] *Id.*

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

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

that can be resolved through PJM's capacity market.[54] By aligning customer charges with actual market-based capacity costs, CPP ensures that customers are not required to pay speculative premiums unrelated to the actual cost of obtaining supply.[55]

The framework is also consistent with AEPS, which reflects the Commonwealth's broader policy of maintaining reliable electricity service while promoting competitive electricity markets and reasonable costs for customers.[56] Dr. Ogur testified that CPP does not interfere with AEPS compliance or competitive procurement.[57] Instead, the OCA demonstrated that the CPP ensures that capacity costs associated with meeting reliability requirements are recovered transparently and efficiently.[58]

The Commonwealth Court's decision in *CAUSE-PA* further supports this approach.[59] In *CAUSE-PA*, the Court recognized that the Commission's statutory mandate

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

[55] OCA St. 1 at 22-23; OCA St. 1R at 7-11; OCA St. 1SR at 19-21; OCA M.B. at 12-14.

[56] OCA St. 1 at 14.

[57] OCA St. 1 at 24-26.

[58] OCA M.B. at 12-13; *See Pennsylvania Universal Default Supplier Master Agreement, Duquesne Light Co.* at 102; https://www.duquesnedsp.com/Portals/0/SupplierDocuments/DSP_X_SMA.pdf (previously accessed on July 8, 2026); *PECO Energy Co. Pennsylvania Default Service Supplier Master Agreement* at 104 (Dec. 15, 2025); https://www.pecoprocurement.com/assets/files/1%20DSP%20VI%20RFP%20Rules%20Appendix%201%20-%20Uniform%20SMA_MAR%202026.pdf (previously accessed on July 8, 2026); *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2025 through May 31, 2029,* Docket No. P-2024-3047290, Joint Petition for Settlement Attach. A at 14, Attach. B at 13 (previously accessed on Aug. 27, 2024).

[59] *Coal. for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa PUC*, 120 A.3d 1087, 1089 (Pa. Cmwlth. 2015) (*CAUSE-PA).*

includes balancing competing objectives, including customer protection, competitive procurement, and the provision of default service at the least cost over time.[60] The Court did not require the Commission to eliminate all market uncertainty or ensure that suppliers bear every category of market risk. Rather, the Commission retains discretion to design procurement mechanisms that best achieve statutory objectives.[61] Thus, a CPP with true-up represents a reasonable exercise of that authority because it avoids embedding unnecessary risk premiums into customer rates while preserving market-based procurement.

Accordingly, the Commission should find that CPP with true-up is consistent with the Customer Choice Act, Act 129, AEPS, and the principles articulated in *CAUSE-PA* because it promotes competitive procurement, provides transparent cost recovery, and protects default service customers from paying additional premiums for uncertain costs that can be reconciled to actual market outcomes.

Furthermore, RESA contests the fact that NITS and CPP cannot be hedged, in an effort to undermine the credible arguments as presented by the OCA regarding risk premiums.[62] As explained in Dr. Ogur's testimony:

> Hedging refers to physical or financial asset acquisitions by suppliers to reduce or eliminate the risk and uncertainty associated with future revenues, costs, and payment and cash flow obligations. For example, a wholesale supplier that assumes the obligation of delivering energy to residential default service customers in the Met-Et Rate District at a fixed price would attempt to pre-purchase its future energy obligations for the term of its commitment period to reduce or eliminate its risk of paying more for such energy supplies than the fixed price in the default service supply contract.[63]

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[60] *CAUSE-PA* at 1103-1104.

[61] *Id*.

[62] RESA M.B. at 23

[63] OCA St. 1 at 15 n15.

RESA avers that the Company "made no mention… of any inability of wholesale default service suppliers to hedge NITS exposure."[64] RESA goes on to state that it continues to "oppose the CPP mechanism for substantially the same reasons discussed above with respect to NITS," which seems to include the argument as to hedging.[65]

FE PA's proposal to exclude NITS and use a CPP mechanism reflects a recognition that these costs are not readily hedgeable through standard financial markets.[66] If they were hedgeable, suppliers could manage the risk through financial instruments without requiring the significant risk premiums that would otherwise be embedded in FPFR bids.[67] The OCA has demonstrated that neither NITS nor PJM capacity is supported by standard, liquid hedging products, noting that even the Intercontinental Exchange, which offers hundreds of electricity futures, options, and other energy products, does not offer PJM NITS or capacity products.[68]

Rather than suggesting these costs can be effectively hedged, Dr. Ogur testified that NITS and capacity have become increasingly volatile and unpredictable due to rising transmission investment and uncertainty surrounding PJM capacity auctions as follows:

> [C]ontracts should exclude NITS and include the CPP mechanism. Forcing wholesale suppliers to include NITS costs, which are variable, unknowable and unhedgeable, for five years would lead to higher risk premiums and lower auction participation. While capacity costs can theoretically be hedged through bilateral contracting, it is unlikely to yield a benefit to default service customers due to the capacity shortfall which the PJM market currently is in as well as the uncertainty surrounding PJM capacity market (e.g., resource accreditation, load forecasting methodology) and auction rules (e.g., capacity price caps and ceilings). In fact, approving a default service product portfolio design that raises costs to customers by increasing FPFR contract risk

[64] RESA M.B. at 21.

[65] RESA M.B. at 26.

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

[67] *Id*.

[68] *Id*.

premiums and reducing supplier participation would be inconsistent with the "least cost to customers over time" standard.[69]

As a result, requiring suppliers to include these costs in fixed-price bids would force them to assume risks that are difficult to hedge and would inevitably lead to the inclusion of significant risk premiums in FPFR prices.[70] The purpose of excluding NITS through actual cost recovery and addressing capacity through the CPP mechanism is therefore not to recognize these costs as hedgeable, but to avoid requiring suppliers to price unhedgeable or hard-to-hedge risks into their bids, thereby allowing customers to pay actual costs rather than estimated costs inflated by risk premiums.[71]

III. <u>CLASSIFICATION OF NON-RESIDENTIAL DEFAULT SERVICE CUSTOMERS</u>

A. Classification of Customers Based on Maximum Registered Peak Load

The OCA supported FE PA's MRPL customer classification mechanism.[72] JSA, CGC, and Dimension opposed FE PA's MRPL proposal and claimed it is not in compliance with applicable laws and regulations. CGC is seemingly the only party that articulated an opposition to the MRPL proposal and the Company's proposed definition itself.[73]

CGC incorrectly asserted that MRPL establishes customer classifications solely based on a customer's demand level (i.e., whether demand is above or below 100 kW) for purposes of determining the applicable default service rate.[74] In fact, FE PA's definition of MRPL also includes a customer's impact on the Company's procurement requirements.[75]

[69] OCA St. 1R at 9.

[70] OCA St. 1 at 22; OCA St. 1R at 9.

[71] OCA St. 1 at 22-24.

[72] OCA M.B. at 14.

[73] CGC M.B. at 15-17.

[74] CGC M.B. at 15-16.

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

MRPL is intended to capture a customer's broader impact on default service procurement, including the effects of customer generation.[76]

While demand is an important aspect of FE PA's MRPL customer classification, FE PA's MRPL proposal is not based on demand criteria alone.[77] For example, a default service customer with solar generation may appear to rely less on grid power because the solar system offsets some of their electricity usage.[78] However, if the solar generation system unexpectedly shuts down during a peak period, the grid must immediately supply the lost generation.[79] The generator's nameplate capacity represents the potential demand that could return to the grid, which is why the Company's proposed MRPL definition is designed to account for the needs of sophisticated customers and ensure adequate planning for scenarios like this when securing electricity supply.[80]

CGC also objected to FE PA's MRPL proposal by alleging that a DSP proceeding is not the appropriate venue to address this definition.[81] As explained in the OCA's Main Brief, the *Penn Renewables* case affirmed the PUC's approval of UGI's DSP.[82] In that case, UGI's plan successfully established the Supply Peak Load Impact (SPLI) design, which utilized MRPL concepts to reclassify certain large, net-metered customer-generators into hourly locational marginal pricing classes.[83] The Commonwealth Cour's affirmation created a clear judicial precedent that utilizing peak load constructs to reclassify customers

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[76] FE PA St. 4 at 16; OCA St. 1R at 15-17.

[77] FE PA St. 4 at 16.

[78] OCA St. 1R at 17.

[79] OCA St. 1R at 17.

[80] FE PA St. 1 at 17; FE PA Exh. DMY-6 at 1; OCA St. 1R at 15-17.

[81] CGC M.B. at 40.

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

[83] *See* OCA St. 1R at 23.

is legal, may occur in an individual Electric Distribution Company's (EDC's) proceeding, and does not violate retail net-metering protections.[84]

CGC also attempts to argue that the *Penn Renewables* case is not persuasive because "another utility, serving a different territory with different customers, under a different record, with a materially different proposal, had a SPLI concept approved."[85] However, the *Penn Renewables* case affirms that the Pennsylvania Public Utility Commission has the broad discretion to define and apply demand-based customer classifications for modern customer-generators.[86]

Additionally, the express language of the governing Commission regulations permit the Commission to consider the MRPL proposal in this proceeding. Specifically, the Commission's regulations define MRPL as:

> *Maximum registered peak load*—The highest level of demand for a particular customer, based on the PJM Interconnection, LLC, ''Peak Load Contribution Standard,'' or its equivalent, **and as may be further defined by the EDC tariff in a particular service territory**.[87]

As the OCA has demonstrated that the record does not disregard or waive governing legal requirements, but instead upholds the express language relating to the same.[88]

B. Projections of Customer-Generator Growth

JSA opposed FE PA's MRPL by claiming that FE PA's rationale that new classification criteria is unnecessary because "there has been an increase in one to three-megawatt (MW) solar projects applying for interconnection with the intent to become net-metered customer-generators."[89] CGC also objected to the MRPL proposal by challenging

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

[85] CGC M.B. at 40.

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

[87] 52 Pa. Code § 54.182 (emphasis added).

[88] OCA St. 1R at 23.

[89] JSA M.B. at 14 *citing* FE PA St. 1R at 17.

the assertion that the 1,555 pending applications for new generation are speculative and because the Company used projected penetration rates to generate PTC rates for this proceeding.[90] JSA and CGC attempt to minimize the risk of these pending applications by forecasting themselves, offering that "only 18% (627 MW) of the potential projects have progressed to the milestone of paying for Study Agreements and less than 15% (573 MW) of those projects have signed Construction Services Agreement."[91] Further, while JSA is seemingly aligned with CGC on these issues and alleges that the Company has overestimated the future growth of customer-generators,[92] the JSA argued that the main remedy for this is resolved by their proposed grandfathering and legacy rights proposal. The OCA responds to JSA's grandfathering arguments in Section III.E, below.

CGC asserts that net metered customers have little to no load, rendering the concerns of switching risk nonsensical.[93] However, under cross examination at the evidentiary hearing, Dr. Ogur demonstrated that net-metered customers present a unique switching and procurement risk in default service because electric generation suppliers must procure capacity and energy well in advance, often as much as 30 months before the delivery period.[94] Dr. Ogur explained that those procurement decisions are based on forecasts of the number and characteristics of customers expected to remain on default service.[95] While the current population of net-metered customers may not materially affect those forecasts, a significant increase in customer-generators can materially change the utility's default service obligations.[96]

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[90] Tr. 80, 166.

[91] JSA M.B. at 16; CGC M.B. at 17; CGC St. 1 at 8.

[92] JSA M.B. at 15.

[93] CGC M.B. at 24.

[94] Tr. 166.

[95] Tr. 166.

[96] *Id*.

Dr . Ogur testified that, if the number of net-metered customers grows from only a handful of customers to more than 1,500 projects during the procurement horizon, suppliers cannot reasonably predict when those resources will be generating, when they may unexpectedly rely on default service due to outages or intermittent generation, or how their participation will affect system peak obligations.[97] As a result, suppliers face substantial uncertainty regarding the amount of energy, capacity, and related products they must procure.[98]

Procurement uncertainty increases the risk of inaccurate load forecasts, exposes suppliers to potentially significant financial losses, and may ultimately result in higher default service costs or cost shifts to other customers.[99] Accordingly, it is reasonable for the Company to account for the unique operational characteristics and switching risks presented by a growing population of net-metered customers when designing its Default Service Plan and associated customer classifications as it has done in this instant matter.[100]

The 1,555 pending applications for new generation further demonstrate that the volumetric risks identified by the OCA are not speculative and represent a growing challenge for default service procurement.[101] As additional distributed generation resources are interconnected, suppliers face increasing uncertainty regarding the amount and timing of customer load that will remain on default service.[102] This uncertainty affects suppliers' ability to accurately forecast load requirements and manage procurement risk, particularly where generation output may vary based on system conditions, operational status, and the timing of new projects entering service.[103]

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[97] Tr. 166-167.

[98] *Id*.

[99] *Id*.

[100] *Id*.

[101] OCA M.B. at 20; *see also* Tr. 166.

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

[103] *Id*.

The continued growth of customer generation reinforces the need for a procurement structure that appropriately accounts for these risks and avoids imposing additional risk premiums on smaller commercial default service customers.[104] Substantial evidence supports approval of the FE PA's MRPL proposal because it provides a mechanism to appropriately address these procurement risks and ensure that costs are allocated among customers in a manner consistent with their impact on default service requirements.

C. Costs and Benefits of Customer-Generators

1. PTC Rider vs. HP Rider

The OCA supported FE PA's proposed methodology for implementing its MRPL proposal that includes both demand and supply impacts to ensure that large customer-generators are grouped with other large customers for default supply procurement purposes.[105] JSA opposed the Company's proposal to move customer-generators from the PTC Rider to the Hourly Pricing (HP) Rider, arguing that the proposal is intended to address a procurement risk that JSA believes is overstated and based on hypothetical scenarios.[106] According to JSA, reclassifying customer-generators would have significant adverse consequences for customers that have already invested in distributed generation projects.[107] JSA reiterated the concerns raised by CGC: that placing customer-generators on the HP Rider would reduce the economic viability of photovoltaic distributed generation projects in Pennsylvania, discourage future investment, and incentivize developers and investors to pursue projects in other states with greater regulatory certainty.[108] CGC and JSA further asserted that the combination of increased uncertainty, lower compensation, and exposure to hourly price volatility under the HP Rider would undermine investor confidence and impede the continued development of distributed solar resources in the

[104] Tr. 83.

[105] FE PA St. 1 at 17.

[106] JSA M.B. at 17.

[107] *Id.*

[108] JSA M.B. at 17 *citing* CGC St. 1 at 5-7.

Commonwealth.[109] CGC further asserted that the Company's proposal is an overcorrection without further data in support thereof.[110]

As discussed above and in the OCA's Main Brief, the Company's justification is properly based on load forecasting uncertainty, procurement risk, and/or switching risk.[111]

JSA also argued that the reclassification may expose their participating companies to hourly market prices.[112] Although transferring customer-generators to the HP Rider changes the way they are charged for generation service and is based on hourly market prices, the proposal does not deprive customer-generators of reasonable alternatives and both riders pay the full retail value to customer generators.[113] Customer-generators remain free to obtain price certainty by purchasing generation service from a competitive supplier under a bilateral or fixed-price contract.[114] Therefore, the HP Rider does not unfairly force customer-generators to bear price volatility.[115] Rather, it preserves default service as the default option while allowing customers to choose a more stable pricing arrangement if they prefer.[116]

Additionally, JSA and CGC's arguments reiterate in multiple ways that these parties are concerned that the HP Rider will pay large customer generators less for their excess generation.[117] However, as large customer-generators can introduce uncertainty into default service load requirements and create procurement risks that differ from smaller commercial customers, applying the HP Rider to these customers ensures that

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[109] *Id*.

[110] CGC M.B. at 41.

[111] FE PA St. 1R at 16-17; FE PA St. 4 at 16; OCA St. 1R at 15-17, 31.

[112] JSA M.B. at 29.

[113] Tr. 99, 109.

[114] Tr. 117.

[115] Tr. 165.

[116] Tr. 165.

[117] CGC M.B. at 21; JSA M.B. at 29.

compensation more accurately reflects the Company's costs of serving them.[118] The Company's proposal therefore aligns HP Rider eligibility with the customers' actual impact on default service procurement and promotes more equitable allocation of costs among similarly situated customers, and the Commission should adopt the Company's proposal.

2. Risk Premiums

As discussed in the OCA's Main Brief, both CGC and JSA opposed the MRPL proposal, with the CGC raising the most voluminous objections regarding risk premiums.[119] CGC's and JSA's arguments focus primarily on the fact that the parties have not quantified the risk premiums.[120] In an attempt to bolster these arguments, JSA alleged that the risk premiums are hypothetical and that the company failed to ask customer generators if risk premiums exist.[121] CGC reiterated its argument that customer generators "have little to no load" and claims the concern is "nonsensical."[122] The OCA addresses and refutes the these arguments relating to Projections of Customer-Generator Growth in Section III.B, above (relating to Projections of Customer-Generator Growth) and in the OCA's Main Brief.[123]

The continued growth of customer generation reinforces the need for a procurement structure as proposed because it appropriately accounts for these risks and avoids imposing additional risk premiums on smaller commercial default service customers.[124] The record contains substantial evidence supporting approval of FE PA's MRPL proposal, which provides a reasonable mechanism to address these procurement risks and ensure that costs

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[118] OCA St. 1SR at 30

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

[120] JSA M.B. at 21-23; CGC M.B. at 22-25.

[121] JSA M.B. at 22.

[122] CGC M.B. at 24.

[123] OCA M.B. at 17-24.

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

are allocated among customers in a manner consistent with their impact on default service requirements.[125]

JSA and CGC failed to present evidence that rebuts the Company's and OCA's showing that the proposed MRPL framework appropriately accounts for the procurement uncertainty associated with increasing customer generation while protecting other default service customers from costs arising from those risks. Simply calling OCA and the Company's record evidence an "evidentiary fallacy"[126] is inaccurate. It is also inaccurate to claim that the Settling Parties are asking that affordability be the ultimate "proxy" for the "burden of proof."[127]

Again, the OCA demonstrated throughout this record, through multiple lines of analysis, that the Commission should adopt FE PA's MRPL proposal.[128] The OCA demonstrated that grouping large customer-generators with small commercial customers would improperly shift additional procurement costs and risks onto small commercial default service customers.[129] Dr. Ogur has testified that large customer-generators introduce both switching risk and volumetric risk into FPFR procurements.[130]

Dr. Ogur testified that these risks are real and would likely cause FPFR suppliers to include higher risk premiums in their bids or reduce participation in the auctions, resulting in higher and/or more volatile PTC rates for small commercial customers.[131] Specifically to this point, Dr. Ogur testified: "Like just to give magnitude, I believe there are companies said there are 14 net metering customers right now. The Company said there are 1,555

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

[126] CGC M.B. at 12.

[127] CGC M.B. at 13.

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

[129] OCA St. 1 at 39.

[130] OCA St. 1 at 38.

[131] *Id*. at 38-39.

applications."[132] Additionally, allowing large customer-generators to receive the higher PTC rates for exported generation would shift the resulting incremental costs onto the broader small commercial customer class.[133] By assigning large customer-generators to the appropriate procurement group, the MRPL proposal better aligns procurement costs and risks with the customers that create them and the Commission should adopt this proposal.

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

JSA and CGC argued in support of customer-generators registering "negative loads" as a result of the excess generation they produce; and applying the cost savings of those negative loads to reduce the allocation of the relevant costs to the default service class in which the customer-generator is assigned.[134] JSA oversimplified and misstated the OCA's position by extrapolating a quote from the OCA's Statement in Support, quoting this standalone sentence "compensating customer-generators for a value they did not create, such as a negative PLC, would result in an inequitable cost shift, effectively requiring other customers in the zone to subsidize customer-generators"[135] Dr. Ogur explained this concept in depth in his surrebuttal testimony, to which that quote references:

> First, capacity requirements and costs assigned by PJM to an EDC zone is determined three years before the start of a delivery year (in "steady state" when BRAs are conducted according to schedule). Since "negative loads" of customer-generators are not included in such capacity requirement and cost assignment by PJM, customer-generators' "negative loads" would not reduce the EDC zone's total capacity requirement or total capacity costs. Therefore, paying customer-generators for a value (in this instance, negative PLC) which they have not created amounts to an unfair subsidy to customer-generators from all other customers in the zone.[136]

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

[133] *Id*.

[134] JSA M.B. at 23-27; CGC M.B. at 25-26.

[135] JSA M.B. at 26-27.

[136] OCA St. 1SR at 33.

JSA disagreed and characterized this disagreement as the OCA "misunderstanding" the proposal.[137]

However, Dr. Ogur agreed with FE PA as JSA's proposal does not adequately account for whether customer-generators will actually provide those benefits during PJM peak capacity and transmission conditions.[138] Dr. Ogur warned that:

> Being a capacity resource in PJM and getting compensated for it would entail making a commitment to PJM, subject to nonperformance penalties, to be available during system emergencies including during non-solar hours. Interconnecting to the EDC distribution grid does not entail any performance commitment, so customer-generators cannot be deemed to be entitled to capacity revenues based merely on performance during PJM 5CP hours.[139]

Dr. Ogur explains that assigning negative PLCs to customer-generators would increase capacity obligations and costs for other customers and could disrupt fixed-price commitments previously negotiated by customers, EGSs, and wholesale suppliers.[140] This is not refuted, but is instead merely critiqued by JSA.[141] However, the OCA demonstrated that rejection of JSA's proposal, and by way of association the CGC's agreement with the same, are appropriate and supported by record evidence.

4. Other Costs and Benefits

JSA argued that the grid will require additional resources and that distributed generation can help meet those future needs.[142] JSA claims that the Company's MRPL proposal could discourage the development of customer-generation projects, thereby limiting the ability of distributed solar resources to contribute to meeting future system

[137] JSA M.B. at 26-27.

[138] *Id*.

[139] *Id*.

[140] OCA St. 1SR at 35.

[141] JSA M.B. at 26-27.

[142] JSA M.B. at 27-28.

demand.[143] JSA then reiterates its prior positions as to societal benefits of solar energy, specifically referencing health care costs, air pollution, and job creation as examples.[144] CGC also argued that the Company's MRPL proposal could discourage investment in additional distributed energy resources that may help address future resource adequacy needs.[145]

JSA and CGC emphasized the broader societal benefits of distributed generation while simultaneously asserting that developers may withdraw investment from Pennsylvania if customer-generators are no longer treated as small businesses for default service purposes.[146] However, as explained by FE PA witness Mr. Young, "it is important to note that the issue here is not whether solar energy can produce certain societal benefits to Pennsylvania. The question is whether the customers of FE PA's small commercial class should continue to subsidize large customer-generators under the PTC Rider."[147] The evidence demonstrates that the Company's proposal is focused on ensuring that rates accurately reflect the costs and risks created by different customer classes, not on other policy-based issues.[148] Aligning compensation and cost responsibility with actual procurement impacts promotes a fair and sustainable framework for integrating customer generation while protecting other customers from bearing costs that are not attributable to their usage and the Company's proposal should therefore be adopted.[149]

Additionally, the OCA maintains that the issue as it pertains to this proceeding is whether the MRPL methodology appropriately classifies customer-generators for default service procurement purposes, not whether customer-generators should receive

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[143] *Id.*

[144] *Id.* at 28.

[145] CGC M.B. at 29-30.

[146] CGC M.B. at 21, 33-36; JSA M.B. at 14-15.

[147] FE PA St. 1R at 20.

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

[149] OCA M.B. at 24.

compensation for categories of benefits that are outside the scope of both relevant riders.[150] Accordingly, the Commission should reject CGC and JSA's arguments as a result.

D. Compliance with Applicable Laws and Regulations

Both the CGC and JSA argued that the Company's MRPL proposal violates various applicable laws.[151]

JSA notes that AEPS requires that customer-generators receive the "full retail value" for excess generation and that this requirement must be considered alongside Act 129's mandate that default service be provided at the least cost over time.[152] According to JSA, the Company's proposed changes would effectively reduce compensation for customer-generators by altering the rate treatment applicable to excess generation, contrary to the intent and requirements of AEPS.[153]

CGC argued that the MRPL definition violates the law, and the OCA responds to this assertion in Section II.A, above. CGC further argued that *Aetna Cas. & Sur. Co. v. Ins. Dep't.* is instructive in this instant matter.[154] The OCA acknowledges that this case stands for the assertion that agencies cannot write their own rules, particularly where there is clear and unmistakable language governing the issue.[155] However, as explained above, the statute and regulation[156] permit the Commission to adopt the MRPL proposal.

CGC also argued that MRPL is unlawful under AEPS, Act 129, and applicable Commission regulations.[157] CGC contends that the proposal improperly reclassifies customer-generators based on MRPL rather than actual demand and would subject certain

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[150] OCA St. 1R at 22.

[151] CGC M.B. at 1-2, 12, 14, 42-45; JSA M.B. at 28.

[152] JSA M.B. at 28.

[153] *Id*.

[154] *Aetna Cas. & Sur. Co. v. Ins. Dep't.,* 638 A.2d 194 (Pa. 1994).

[155] *Id*. at 200.

[156] 66 Pa.C.S. §§ 2801–2812; 52 Pa. Code § 54.182.

[157] CGC M.B. at 1-2, 12, 14, 37-46.

customer-generators to the HP Rider, resulting in compensation for excess generation at hourly market-based rates rather than the "full retail value" required by AEPS.[158] According to CGC, this approach unlawfully substitutes a wholesale-based price for the statutory retail compensation requirement and undermines AEPS' purpose of promoting renewable energy development.[159] CGC cross-examined FE PA Witness Mr. Young on this at the evidentiary hearing, only to establish that:

> [B]oth the PTC and the HP rider are full retail value riders. The difference is the HP rider uses the [LMP (Locational Marginal Price)] as their basis of energy. The PTC rider is done through a competitive bid process from default service providers, which then becomes the piece that's the comparison.[160]

CGC further argued that the MRPL proposal violates Act 129's protections for small business customers by subjecting customers with actual peak loads below 25 kW to hourly pricing components that may change every five minutes, rather than default service rates that may not change more frequently than quarterly.[161] CGC maintains that the Company's proposal does not comply with the Commission's regulations governing customer classification, including 52 Pa. Code Section 54.187, because it relies on a constructed measure of demand that equates generation capacity with customer load.[162] CGC contends that using MRPL to classify customer-generators improperly treats supply as demand, reduces rate transparency and predictability, and creates an unlawful departure from existing regulatory requirements.[163]

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[158] CGC M.B. at 2, 42-45.

[159] *Id*.

[160] Tr. 100.

[161] CGC M.B. at 45-46.

[162] *Id*.

[163] *Id*.

As explained and supported by *Penn Renewables*, the HP Rider is still a "Retail" Rider.[164] The Commonwealth Court affirmed that net-metering compensation under Commission regulations follows a three-step process: (1) monthly net generation is credited at the applicable "full retail rate," including generation, transmission, and distribution components; (2) unused credits are carried forward to offset future consumption; and (3) any remaining annual credits are cashed out at the utility's Price-to-Compare (PTC) rate.[165] The Commonwealth Court concluded that this framework satisfies the AEPS Act's requirement that customer-generators receive "full retail value" for excess generation.[166]

Importantly, the Commonwealth Court rejected the argument that an hourly-priced default service tariff fails to provide full retail value.[167] The Commonwealth Court found that an hourly-priced rate remains a retail rate because it includes all applicable retail cost components, including energy, capacity, transmission, distribution-related default service costs, administrative costs, and other charges.[168] The Commonwealth Court further recognized that AEPS requires compensation at the full retail rate applicable to the customer's class, but does not require a fixed or flat rate structure.[169] Accordingly, an hourly-priced tariff that reflects the full cost of retail service satisfies AEPS' full retail value requirement.[170]

Penn Renewables therefore confirms that reclassifying larger customer-generators to an hourly-priced default service rate does not unlawfully reduce net-metering compensation, provided that the applicable rate includes the full retail cost components

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[164] *Penn Renewables* at *10-13.

[165] *Id*. at *10-11.

[166] *Id*. at *10-13.

[167] *Id*. at *5.

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

[169] *Id*. at *12-13.

[170] *Id*.

required under Commission regulations. Thus, the Commission should reject CGC's arguments in the instant case and rely upon *Penn Renewables* in doing the same. As the record demonstrates and Mr. Young explained, the transfer of a customer to the HP Rider does not change their entitlement to "full retail value," it merely changes the mathematical baseline used to calculate that value.[171] Thus, the Commission should reject the CGC's argument herein, and apply the same rationale to JSA's arguments as deemed applicable.[172]

CGC argued that any customer with an actual registered peak load below 25 kW must be treated as a small business customer under Act 129 and therefore must receive a default service rate that does not change more frequently than quarterly.[173] Based on that interpretation, CGC claims that placing these customers on the HP Rider, which is based on hourly pricing, violates Act 129.[174] This argument, however, assumes that the customer's existing load measurement is the only relevant factor for classification.[175]

The Company's MRPL proposal addresses a different issue: whether large customer-generators should continue to be treated the same as traditional small commercial customers when their generation capacity can materially affect default service procurement, forecasting, and system planning.[176] As explained throughout the record, a customer-generator's net load at a particular time does not necessarily reflect the potential impact that its generation resources can have on the Company's obligations.[177]

The record establishes that the MRPL proposal is designed to ensure that customers are placed in the appropriate procurement class based on their actual impact on default

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[171] Tr. 100.

[172] JSA M.B. at 12, 15, 18.

[173] CGC M.B. at 2.

[174] *Id*.

[175] CGC M.B. at 15-16.

[176] FE PA St. 4 at 16.

[177] OCA St. 1R at 17; Tr. 171; OCA M.B. at 17-21.

service obligations, not solely on their net consumption at a particular point in time.[178] The record also shows that customers with substantial generation resources impose different forecasting, procurement, and risk-management considerations than traditional small commercial customers.[179] Applying the HP Rider to such customers does not unlawfully alter small business protections; rather, it ensures that default service rates reflect the costs and risks associated with the customer's actual participation in the electric system.[180]

Therefore, the Commission should reject the arguments of JSA and CGC as they have not proven that the MRPL proposal is unlawful or violative in any way.

E. Grandfathering Proposals

Dimension primarily opposed the grandfathering provisions in the pending Settlement.[181] Dimension particularly objected to the Settlement provision that would establish the compensation methodology for net excess generation through 2041, including the incorporation of capacity and line loss components of the HP Rider, and is concerned about oversight over the compensation formula.[182] Dimension further argued that the proposed transition period is overly restrictive and urges adoption of a longer grandfathering period consistent with the approach approved in the PPL proceeding.[183] Dimension supports JSA's position regarding legacy rights and cites concerns regarding the impact of the proposed changes on existing and future solar development.[184] Accordingly, Dimension requests that the Commission adopt a more expansive

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[178] FE PA St. 1 at 17.

[179] OCA St. 1R at 21; *see also Petition of UGI Utilities, Inc – Electric Division for Approval of a Default Service Plan for the period of June 1, 2025 through May 31, 2029*, Docket No. P-2024-3049343, Order at 54 (Feb. 20, 2025).

[180] OCA St. 1SR at 30.

[181] Dimension M.B. at 5-6.

[182] *Id*. at 5.

[183] *Id*. at 7.

[184] *Id*. at 8-9.

grandfathering period and provide additional protections for customer-generators that have relied on the prior rate structure.[185]

JSA also opposed the Company's MRPL proposal, arguing that it improperly changes the historical method for classifying net-metered customer-generators by considering both peak load consumption and MRPL, rather than peak load consumption alone.[186] Under the Company's proposal, JSA takes exception that only customer-generators with both a peak load demand and MRPL below 100 kW would remain in the Commercial class, while larger customer-generators would be moved to the Industrial class and subject to the HP Rider.[187] JSA, with support of CGC,[188] also contends that the proposed reclassification would harm existing and near-operational customer-generators by reducing compensation for excess generation from the PTC Rider rate to the more volatile HP Rider rate.[189] JSA argued that these customers made investment decisions under the prior rate structure and that changing their compensation framework without adequate transition protections would undermine regulatory certainty and discourage renewable energy investment.[190] As a result, JSA asserts that an appropriate grandfathering or legacy rights provision is necessary to protect mature-stage customer-generators while balancing the interests of other Commercial customers.[191]JSA maintains that a gradual transition of up to 25 years is the *only* equitable solution because it preserves customer-generator investments while allowing the Company to address future procurement concerns.[192] JSA disputes the Company's concerns regarding the cost impacts of extended

[185] *Id*. at 10.

[186] JSA M.B. at 13.

[187] *Id*.

[188] CGC M.B. at 46.

[189] *Id*.

[190] *Id*. at 15.

[191] *Id*. at 15, 28-33.

[192] JSA M.B. at 30; JSA St. 1 at 65-66.

grandfathering, arguing that appropriate legacy protections are necessary to avoid imposing abrupt and significant changes on projects that were developed under the existing rate structure.[193]

JSA attempts to rely on the PPL proceeding as support for a 10-year legacy period to assert its claims.[194] As to the efforts of JSA and others to use a Settlement as precedent, CAUSE-PA and OCA addressed this on the record during the Evidentiary Hearing.[195] Specifically, OCA reiterates that while the Commission can take judicial notice of the PPL Settlement.[196] However, the OCA objects to the Commission thereby using the Settlement as precedent herein.[197] JSA's attempt to use the Settlement as precedent should be rejected.

The OCA demonstrated that both the 25-year grandfathering for completed projects and the 15-year grandfathering for pre-construction projects, even at 90 percent of commercial PTC, are simply excessive.[198] Dr. Ogur testified, explaining:

> In UGI Electric's DSP case, the Commission determined that residential and small commercial customers will pay higher default service rates caused by and for the benefit of large customer-generators in the absence of SPLI (which is the equivalent of MRPL in FE PA's Petition). In the same case, the Commission also determined that including customers with large on-site generators attached to their loads in the same default service procurement and rate group as residential customers would also result in unreasonable subsidization by the residential customers. The reasoning for residential customers would also apply to small commercial customers. Perpetuating this harm to, and subsidization of large customer-generators by, small customers by grandfathering these arrangements for 15 or 25 years is not fair

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[193] *Id*.

[194] *Id*. at 32.

[195] Tr. 177-178, 183-184.

[196] *Id.*

[197] Tr. 177-178, 183-184.

[198] OCA M.B. at 29; OCA St. 1R at 23-24.

for small commercial customers and it should be rejected by the Commission.[199,200]

The record clearly establishes that large customer-generators create distinct procurement risks and costs that are not shared by similarly situated small commercial customers.[201] Continuing to recover those costs through the Commercial PTC Rider would perpetuate an unreasonable subsidy in which small commercial customers bear costs associated with the benefits received by large customer-generators.[202] Accordingly, the Commission should reject JSA's proposed grandfathering provisions and ensure that customer classifications and cost recovery mechanisms accurately reflect the costs and risks associated with serving each customer group.[203]

Thus, the Commission should reject JSA, Dimension, and CGC proposals seeking lengthy and unreasonable grandfathering periods.

IV. RATE DESIGN AND COST RECOVERY

A. Price to Compare Default Service Rate Rider

The PTC Default Service Rate Rider has been resolved through the Settlement and is not a contested issue in this proceeding.[204]

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[199] OCA St. 1R at 23.

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

[201] OCA M.B. at 29; *Petition of UGI Utilities, Inc – Electric Division for Approval of a Default Service Plan for the period of June 1, 2025 through May 31, 2029*, Docket No. P-2024-3049343, Order at 54 (Feb. 20, 2025); FE PA St. 1R at 23-24.

[202] OCA St. 1SR at 33.

[203] OCA M.B. at 28-30.

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

B. Hourly Pricing Default Service Rider

As discussed above, the OCA supports FE PA's MRPL proposal.[205] Inclusion of large customer-generators in the commercial customer procurement group would bundle small commercial customers with more sophisticated large customer-generators in the same FPFR contract procurements.[206] OCA witness Ogur testified that this would negatively affect small commercial default service customers in two ways as follows:

> First, because the more sophisticated, large customer-generators would entail higher switching risk for the FPFR suppliers, the FPFR suppliers would either build larger risk premiums into their FPFR contract bids or shy away from participating in the FPFR auctions. This would have the likely effect of higher PTCs and/or more volatile rates for small commercial customers due to the inclusion of large customer-generators in the small commercial procurement group. In addition, large customer-generators would receive the higher PTC, which would have been inflated simply by their mere participation and switching risk, for their exports, which in turn would be recovered from all small commercial default service customers, most of which are small commercial customers.
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> …
>
> Second, even the large customer-generators that stay on default service constitute volumetric risk for FPFR suppliers because of the uncertainty surrounding the level and profile of on-site generation (e.g., outages, in-service dates of on-site generators that are in FE PA's distribution interconnection queue). Similar to switching risk, this volumetric risk would prompt the FPFR suppliers to either build larger risk premiums into their FPFR contract bids or shy away from participating in the FPFR auctions, resulting in higher PTCs and/or more volatile rates for small commercial customers.[207]

CGC opposed FE PA's MRPL proposal claiming that it would reduce compensation that net-metered customer-generators would be entitled to for their exported energy.[208] CGC also claimed that the HP Rider does not properly compensate customer-generators

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205 OCA St. 1 at 40.

206 OCA St. 1 at 38.

207 OCA St. 1 at 38-40.

208 CGC St. 1 at 5.

because it only addresses electric energy, electric capacity, reduced system losses, and reduced transmission costs, but not other benefits customer-generators provide such as market electric price reductions, health benefits, decarbonized energy, investments in the distribution system, and state economic benefits.[209]

These concerns, however, are unsubstantiated because the PTC Rider and the HP Rider include the same cost components.[210] OCA witness Ogur testified that:

> Commercial customer PTCs (under the PTC Rider) would only differ (positively or negatively) from industrial customer PTCs (under the HP Rider) because of the way in which individual cost components are procured by the Company for each customer class as well as the unique load and (switching and usage) risk characteristics of each customer class. Therefore, regardless of whether compensation for customer-generators' exported energy is smaller or larger, or more or less volatile, under the HP Rider than under the PTC Rider, that is the fair outcome because large customer-generators belong in the same default service procurement group as the industrial customers in terms of sophistication and risk profile for wholesale suppliers of FPFR contracts as affirmed by the UGI Electric DSP case (Docket No. P-2024-3049343).[211]

Accordingly, since both the PTC Rider and the HP Rider capture the same set of benefits customer-generators provide, as claimed by the CGC, CGC witness Heidell's assertion that the HP Rider fails to appropriately compensate customer-generators is inconsistent.[212]

V. CUSTOMER REFERRAL PROGRAM

As discussed in the OCA's Main Brief, the Commission should approve FE PA's proposal to not renew the CRP.[213] As OCA witness Alexander testified, the CRP no longer provides the consistent consumer benefits it promises and instead functions primarily as an

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[209] *Id.* at 13.

[210] OCA St. 1R at 21.

[211] *Id.*

[212] *Id.* at 22.

[213] OCA M.B. at 32.

EDC-sponsored marketing tool for participating EGSs.[214] The record demonstrates that the program has experienced declining supplier participation, enrolls only a small percentage of eligible customers, and contains structural flaws that can result in customers paying more than the applicable PTC.[215] Because Pennsylvania's competitive retail market is now mature, suppliers remain free to market their products directly to customers without requiring FE PA to continue sponsoring the program.

RESA and Town Square nevertheless argue that the Commission should reject FE PA's proposal because the CRP produced approximately $750,000 in customer savings during 2025 and 2026, allegedly at no cost to FE PA.[216] They further contend that any concerns identified by the OCA could be addressed through additional customer disclosures, customer education, or other program reforms rather than eliminating the CRP altogether.[217] Town Square also dismisses Ms. Alexander's concerns regarding future PTC changes as speculative because customers may terminate their contracts without penalty at any time.[218]

These arguments ignore the fundamental defects identified by the OCA. The relevant inquiry is not whether some customers realized savings during a particular period, but whether the CRP consistently delivers the benefits it advertises to consumers enrolled in EGS service and remains in the public interest. As Ms. Alexander testified, the advertised seven percent discount is based solely on the PTC in effect at enrollment, even

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

[215] OCA M.B. at 32-33.

[216] RESA M.B. at 29; Town Square M.B. at 9-10.

[217] RESA M.B. at 30.

[218] Town Square M.B. at 10.

though the PTC changes during the twelve-month contract term.[219] Consequently, customers enrolling shortly before a new PTC becomes effective may receive substantially less than the advertised discount or even pay more than default service if the PTC decreases.[220] This is not a disclosure problem. No additional customer education can change the fact that customers bear the risk of future PTC changes while suppliers retain the ability to participate only when doing so is economically advantageous.[221]

Nor does the ability to cancel a contract without penalty cure these defects. As the OCA explained in its Main Brief, Town Square's position merely shifts the burden to residential customers, who must continually monitor changes in the PTC, determine whether their promised discount still exists, and affirmatively switch suppliers or return to default service to avoid paying higher prices.[222] A program marketed as providing a discounted alternative to default service should not require customers to actively police whether the advertised savings continue to exist.

RESA's assertion that FE PA and the OCA failed to evaluate alternatives instead of eliminating the program likewise misses the point.[223] The OCA's position has never been that the CRP merely suffers from inadequate disclosures or insufficient marketing. Rather, the OCA demonstrated that the program's design itself is fundamentally flawed.[224] Additional disclosures cannot guarantee that customers will continue receiving the advertised discount, eliminate suppliers' ability to participate selectively based on market conditions, or prevent customers from remaining on higher-priced contracts through negative-option renewals.[225]

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[219] OCA M.B. at 33-34.

[220] *Id.*

[221] *Id.* at 34.

[222] *Id.* at 35.

[223] RESA M.B. at 30.

[224] OCA M.B. at 33-34.

[225] *Id.*

Moreover, neither FE PA nor the OCA bears the responsibility of redesigning an EGS marketing program that no longer serves a meaningful public purpose and has already been discontinued.[226] Directing FE PA and its stakeholders to determine why supplier participation has declined and develop improvements to a program with clear structural defects, as recommended by RESA, will absolutely come at a cost to FE PA, while not providing any meaningful benefits to consumers.[227] Additionally, such research into supplier participation is not needed. It is no mystery that the decline in supplier participation is the result of rising wholesale prices, making it difficult to offer rates below the PTC, and suppliers will only participate if it is financially advantageous to do so.[228]

Finally, RESA's and Town Square's reliance on aggregate savings figures overlooks the broader record.[229] FE PA demonstrated that supplier participation has declined substantially, participation has disappeared entirely in one rate district, only approximately three percent of eligible residential customers currently participate in the program, and these savings do not capture consumer costs incurred when EGSs automatically enroll customers in new plans without CRP savings.[230] Those facts, combined with the program's well-documented consumer protection concerns, support FE PA's determination that the CRP has outlived the limited purpose it once served in developing Pennsylvania's competitive retail market.

Accordingly, the Commission should reject RESA's and Town Square's request to implement or redesign a successor CRP after termination of the current CRP. The record

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[226] *Joint Petition of Metro. Edison Co., Pennsylvania Elec. Co., Pennsylvania Power Co., and West Penn Power Co. for Approval of their Default Serv. Programs for the Period Beginning June 1, 2023 through May 31, 2027*, Docket No. P-2021-3030013, Order at ¶ 7 (Aug. 4, 2022) (adopting R.D. ¶ 55 without modification).

[227] RESA M.B. at 30-31.

[228] OCA M.B. at 34.

[229] RESA M.B. at 29; Town Square M.B. at 9-10.

[230] *Id.* at 33.

demonstrates that discontinuing the program appropriately protects consumers, recognizes the maturity of Pennsylvania's competitive retail market, and ends an EDC-sponsored marketing program that no longer provides consistent or meaningful benefits to residential customers.

VI. SUPPLIER COORDINATION TARIFF CHANGES AND RETAIL SHOPPING ISSUES

A. Return of Customers to Default Service at Contract Expiration

The OCA recommends that the Commission approve FE PA's proposal requiring residential customers entering into new fixed-term contracts after June 1, 2027, to return to default service upon expiration of their contracts unless they affirmatively elect to remain with their current EGS or choose another supplier.[231] As the OCA demonstrated, this proposal preserves customer choice while addressing documented affordability concerns arising from customers who are automatically renewed into supplier contracts without knowingly agreeing to new pricing terms.[232] Customers remain free to shop competitively, remain with their existing supplier, or select a different supplier.[233] The proposal simply requires that decision to be an affirmative and fully informed one and not the result of inaction.

RESA, Constellation, and the EGS Parties argue that the proposal should be rejected because it: (1) violates the Competition Act and the Commission's contract renewal regulations; (2) constitutes unauthorized switching, or "slamming;" (3) is inconsistent with prior Commission precedent; (4) improperly relies upon comparisons between supplier prices and the PTC; and, (5) undermines Pennsylvania's competitive retail market.[234] WGL and Town Square argue that: (1) waiver of Section 54.10(3) of the Commission's regulations is impermissible because the regulation governs actions of EGSs not EDCs; (2)

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[231] *Id.* at 36.

[232] *Id.* at 37-38.

[233] *Id.*

[234] RESA M.B. at 33-50; Constellation M.B. at 9-14; EGS Parties M.B. at 9-12.

a default service proceeding is the wrong forum to address this proposal; and, (3) FE PA has not met its burden of proof.[235] None of these arguments are persuasive.

RESA's and the EGS Parties' repeated invocation of the Competition Act overlooks the very policy objectives the General Assembly sought to achieve. The Competition Act was enacted because the General Assembly recognized that "[r]ates for electricity in this Commonwealth are on average higher than the national average," and concluded that "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity."[236] The General Assembly further declared that "[e]lectric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions."[237] Thus, the Competition Act was intended not simply to create competition for its own sake, but to foster a competitive market that would control electricity costs while ensuring reasonable electric service for Pennsylvania consumers.

The record demonstrates that, in this respect, the current renewal framework is not achieving those objectives for many residential customers. Residential shopping customers paid approximately \$82 million more than they would have paid under default service in 2025 alone, and nearly \$395 million more between January 2022 and January 2026.[238] While customers may initially enroll with an EGS because it offers prices below the PTC, many are subsequently transitioned through automatic renewals onto contracts with higher prices.[239] The consumer protections proposed by FE PA are intended to address that specific problem by requiring customers to make an affirmative decision before remaining on supplier service after their original contract expires.[240] Those protections therefore

[235] Town Square M.B. at 13-22.

[236] 66 Pa.C.S. § 2802(4)-(5).

[237] 66 Pa.C.S. § 2802(9).

[238] OCA M.B. at 37.

[239] *Id.*

[240] *Id.* at 37-38.

complement, rather than conflict with, the Competition Act's objective of controlling electricity costs for consumers.

Second, RESA and other EGS parties' contention that the proposal constitutes impermissible "slamming" fundamentally misconstrues Pennsylvania's anti-slamming protections. The anti-slamming provisions were enacted to prevent unauthorized enrollment with a competitive supplier or unauthorized switching between suppliers.[241] FE PA's proposal does neither. Customers would return to Commission-approved default service following the expiration of their existing contracts unless they affirmatively choose another option.[242] Customers would not be switched to another EGS without customer consent which is prohibited by the anti-slamming regulations. Moreover, customers receive multiple notices before contract expiration advising them of their options and retain complete freedom to remain with their current supplier or enroll with another supplier with affirmative consent. Because the proposal does not enroll a customer with another EGS after expiration of a fixed contract, but returns the customer to default service, RESA and other EGS parties' reliance on the Commission's anti-slamming precedent is misplaced.

Third, RESA overstates the significance of prior Commission decisions rejecting similar proposals. Neither the *PPL DSP V* nor *PECO DSP VI* proceedings established that the Commission may never approve a waiver of Section 54.10(3).[243] Rather, the

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[241] 52 Pa. Code §§ 57.171-180; *Rulemaking Order Establishing Standards for Changing a Customer's Electric Supplier*, Docket No. L-00970121, Order at 6 (Feb. 26, 1998) ("The purpose of these regulations is to ensure that no consumer has his/her EGS changed without his/her consent.").

[242] Petition at ¶ 51.

[243] *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, Order (Nov. 7, 2024) (*PECO DSP VI*); *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, Order (Dec. 17, 2020) (*PPL DSP V*).

Commission in the *PPL DSP V* proceeding provided a list of evidence that would justify a waiver of Section 54.10(3):

> (1) an increase in customer complaints specifically relating to the Company's SOP and a related increase in costs incurred by PPL Electric in handling such complaints; (2) an inability of customer service representatives to effectively address customer complaints; (3) an increase in payment-troubled SOP customers; (4) an increase in collection activity or service terminations among SOP customers due to the rise of overdue billings; or (5) an increase in the Company's uncollectible expense relating to an increase in payment-troubled SOP customers.[244]

Unlike those earlier proceedings, FE PA has developed precisely that evidentiary record here. Residential shopping customers have been charged over $888 million more than the applicable PTC from August 2017 through December 2025, or $82 million more in 2025 alone.[245] Excessive charges in the competitive market also contribute to increased termination rates for residential shopping customers with termination rates for shopping customers ranging from 14-22% across FE PA's four divisions in 2025, compared to just 1-3% for residential default service customers.[246] Additionally, uncollectable expense in 2025 amongst shopping customers is more than two times higher in Met-Ed and West Penn divisions and more than three times higher in Penelec and Penn Power divisions, than default service uncollectable expense.[247] Accordingly, FE PA met the standard of proof required by the Commission in the *PPL DSP V* and *PECO DSP VI* to justify a waiver of Section 54.10(3) of the Commission's regulations.

There is also a fundamental difference between FE PA's proposal and the proposals made by PECO and PPL in their DSPs. In *PECO DSP VI*, the Commission denied waiver of Section 54.10(3) of the Commission's regulations because "similar to *PPL DSP V*, no evidence was offered to support the results, specific to SOP customers, of overpaying for

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[244] *PPL DSP V* at 97-98.

[245] CAUSE-PA St. 1 at 16-17; OCA M.B. at 37.

[246] CAUSE-PA M.B. at 9.

[247] *Id.*

generation supply associated with PECO's SOP … ."[248] PECO's Standard Offer Program (SOP) serves substantially the same purpose of FE PA's CRP program, referring customers to EGSs that offer customers a 12-month contract at a 7% discount below PECO's default service rate.[249] PECO proposed a term that would require EGSs entering into SOP contracts with customers to automatically transfer SOP customers to default service upon expiration of the SOP contract.[250] This is fundamentally different than FE PA's proposal, because FE PA proposes that all customers with fixed term EGS contracts, not just CRP customers, be returned to default service at the end of the contract term absent affirmative consent. There is substantial evidence that retail shopping customers in its service territory pay significantly more than default service customers, have higher rates of service terminations, and have higher uncollectable expense, is sufficient to meet the standards outlined in the *PECO DSP VI* and *PPL DSP V* proceedings.

Fourth, RESA's criticism of FE PA's reliance on the PTC mischaracterizes both FE PA's proposal and the OCA's position. The OCA never argued that the PTC constitutes a price cap or that any supplier charging above the PTC acts unlawfully. Rather, the PTC serves as an objective benchmark demonstrating that many customers who remain with suppliers following automatic renewals are paying significantly more than they would have paid under default service.[251] That evidence is relevant not because competitive prices must mirror the PTC, but because it demonstrates the affordability consequences of customers remaining on supplier service through inaction rather than informed choice.[252]

RESA likewise argued that customers may remain with an EGS at a higher price than the PTC because they value renewable energy products, loyalty incentives, or other

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[248] *PECO DSP VI* at 79.

[249] *Id.* at 75.

[250] *Id.*

[251] OCA M.B. at 37-38.

[252] *Id.*

non-price attributes.[253] However, RESA identified no evidence demonstrating that customers who are automatically renewed onto new contracts actually receive additional value commensurate with the higher prices they often pay. Nor did RESA present evidence that negative-option renewals themselves reduce customer costs or further the Competition Act's goal of controlling the cost of electric generation. Instead, RESA merely assumed that preserving the existing renewal framework necessarily advances competition. The record demonstrates otherwise. Requiring customers to affirmatively elect to remain with competitive supply after their original contract expires does not diminish competition; it ensures that continued participation in the competitive market reflects an informed customer choice while furthering the Competition Act's objective of protecting consumers from unnecessarily higher electricity costs.[254]

Finally, RESA's prediction that the proposal will undermine Pennsylvania's competitive market relies almost entirely on speculation. Suppliers remain free to market competitive products, innovate, and compete for customers under FE PA's proposal.[255] Requiring affirmative consent does not restrict competition; it ensures that competition reflects informed customer decisions rather than customer inertia.[256] RESA's reliance on decreased participation in the competitive market in Maryland after implementation of a similar return to default service regulation does not prove that the FE PA's proposal will undermine the competitive market, but rather proves that EGSs are not providing products that customers actually want.[257] RESA offered no evidence establishing that the consumer protection proposed here actually decreases consumer choice.

Town Square argued that FE PA's proposal is procedurally improper and FE PA lacks standing to request waiver of Section 54.10 in a default service proceeding because

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[253] RESA M.B. at 45.

[254] OCA M.B. at 37-28.

[255] *Id.*

[256] *Id.*

[257] RESA M.B. at 49.

Section 54.10 of the Commission's regulations governs EGS conduct, not EDC conduct. Nothing in the Commission's regulations limits waiver requests to the entities directly regulated by the provision at issue.

Town Square ignored the Commission's well-established authority to waive its regulations where doing so is in the public interest.[258] The Commission may waive its regulations pursuant to its statutory authority to rescind or modify its regulations or orders when the requested waiver is consistent with the public interest.[259] Likewise, the Commission's regulations expressly contemplate petitions requesting waivers and require that the petitioner identify its interest in the proceeding, the specific waiver requested, the statutory authority supporting the request, and the facts demonstrating why the waiver is warranted.[260] FE PA has satisfied each of those requirements. FE PA specifically requested a waiver of Section 54.10(3) of the Commission's regulations and developed a substantial evidentiary record demonstrating why the waiver is necessary to protect residential customers from documented affordability harms associated with automatic contract renewals.[261]

Town Square next argue that this proceeding is an improper forum because customer contract renewal requirements should remain uniform throughout Pennsylvania rather than varying by EDC.[262] The Commission routinely considers utility-specific tariff provisions in DSP proceedings where necessary to implement default service and protect customers. Indeed, Section 2807(e) of the Competition Act expressly grants the Commission broad authority to approve default service plans that are in the public

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[258] *DLC Petition for Waiver of the Three Business Day Switching Requirements Under 52 Pa. Code § 57.174*, Docket No. P-2014-2448863, Order at 8 (Dec. 4, 2014).

[259] *Id.*

[260] 52 Pa. Code § 5.43(a).

[261] FE PA M.B. at 41.

[262] Town Square M.B. at 20-21.

interest.[263] Nothing in the Public Utility Code prohibits the Commission from approving a utility-specific waiver where the record demonstrates that existing requirements are producing consumer harm in its service territory.

Finally, Town Square contends that FE PA failed to prove the existing renewal framework is inadequate as it requires multiple customer notices before contract expiration.[264] The issue is not whether customers receive notices before contract expiration; it is whether customers knowingly and affirmatively choose to continue competitive generation service after their original contracts expire.[265] Existing notice requirements do not require any affirmative customer action.[266] Consequently, customers may remain on supplier service through inaction alone, even where the renewed contract no longer reflects the terms or pricing that originally motivated the customer's enrollment.[267] Customers who wish to continue receiving renewable energy products, long-term fixed-price contracts, or other value-added offerings remain entirely free to do so by affirmatively consenting to remain with their supplier.[268] The proposal therefore preserves customer choice while ensuring that continued participation in the competitive market reflects an informed decision rather than customer inaction.

Accordingly, the Commission should reject RESA's, Constellation's, EGS Parties', and Town Square's arguments. FE PA's proposal to return customers to default service absent customer consent to remain on an EGS plan after expiration of a fixed term contract preserves customer choice, addresses documented affordability harms associated with automatic renewals, and provides a reasonable consumer protection that is fully consistent with the public interest.

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[263] 66 Pa.C.S. § 2807(e).

[264] Town Square M.B. at 21-22.

[265] OCA M.B. at 37-38.

[266] *Id.*

[267] *Id.*

[268] *Id.*

B. Quarterly Affirmation for Variable Rate Contracts

The OCA likewise recommended in its Main Brief that the Commission approve FE PA's proposal requiring EGSs to obtain and attest to affirmative customer consent on a quarterly basis for residential customers receiving service under month-to-month variable-rate contracts.[269] As the OCA established, this proposal does not prohibit variable-rate products or limit customers' ability to purchase competitive generation.[270] Rather, it ensures that customers periodically and knowingly choose to remain on products whose prices may fluctuate significantly and are determined solely by the supplier.[271]

RESA and the EGS Parties argue that the Commission has already addressed concerns regarding variable-rate contracts through the notice requirements adopted in the 2014 rulemaking and that quarterly affirmations unnecessarily burden suppliers, conflict with existing regulations, discourage competition, and create operational costs that ultimately will be passed on to consumers.[272]

Town Square similarly argued that quarterly affirmations are unnecessary because customers voluntarily select variable-rate products with full knowledge that prices may change, and because the Commission's existing disclosure regulations already provide adequate protection.[273] Town Square further contends that customers choose variable-rate products for reasons other than price and that requiring repeated affirmations improperly interferes with lawful contractual relationships.[274]

These arguments overlook the fundamental concern raised by the OCA. While customers may knowingly enroll in a variable-rate product initially, that does not mean

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[269] OCA M.B. at 39.

[270] *Id.* at 40-41.

[271] *Id.* at 39-41.

[272] RESA M.B. at 50-54; EGS Parties M.B. at 12-14.

[273] Town Square M.B. at 22-24.

[274] *Id.* at 24-26.

they knowingly choose to remain on that product indefinitely as prices change over time.[275] Existing regulations require disclosures, but they do not require customers to periodically reaffirm that they wish to continue purchasing electricity under pricing terms that remain entirely within the supplier's discretion.[276] FE PA has demonstrated that existing protections have not prevented residential customers from remaining on higher-priced variable-rate products through inaction, contributing to documented affordability concerns.[277] Quarterly affirmations therefore supplement, not replace, the Commission's existing consumer protections.

RESA, the EGS Parties, and Town Square have not presented evidence demonstrating that repeated automatic renewals of variable-rate contracts provide meaningful consumer benefits. Instead, their briefs speculate that quarterly affirmations will increase administrative costs and discourage supplier participation but provide no evidence that customers prefer remaining indefinitely on variable-rate products without periodically confirming that decision.[278] Likewise, their reliance on other consumer products that automatically renew is misplaced.[279] Electric service is fundamentally different because it is an essential service, and higher generation prices directly contribute to increased arrearages, collection activity, and the potential termination of electric service.[280] Those unique consequences justify stronger consumer protections than those applicable to discretionary consumer goods and services.[281]

Accordingly, the Commission should reject RESA's, the EGS Parties', and Town Square's arguments and approve FE PA's quarterly affirmation requirement.

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[275] OCA M.B. at 39-40.

[276] *Id.*; 52 Pa. Code § 54.5.

[277] OCA M.B. at 37.

[278] RESA M.B. at 53-54;

[279] OCA M.B. at 38-39.

[280] *Id.*

[281] *Id.*

C. Changes to Purchase of Receivables (POR) Program

As discussed in the OCA's Main Brief, the Commission should approve FE PA's proposed modifications to its POR program, limiting POR eligibility to supplier contracts enrolled after June 1, 2027, that are priced at or below the applicable PTC at the time of enrollment.[282] As Ms. Alexander explained, there is no statutory requirement that EDCs subsidize EGSs administration of services by assuming the billing and collection risks associated with supplier products priced above default service.[283] Rather, FE PA should retain the ability to determine under what circumstances its consolidated billing and collection system is used to collect supplier charges that may ultimately be enforced through utility collection activities and service termination.[284] Where suppliers elect to charge prices above the PTC, it is reasonable that they, not FE PA and its customers, bear the resulting collection risk.[285]

RESA, Town Square, and the EGS Parties nevertheless argued that this proposal undermines Pennsylvania's competitive retail market because POR is an essential component of retail choice.[286] They contend that limiting POR eligibility based on price is unprecedented, unlawfully discriminates based on price, improperly regulates competitive generation rates, and will eliminate customer choice by forcing suppliers to withdraw from the FE PA service territory.[287] They further argued that FE PA failed to demonstrate a sufficient relationship between POR and customer affordability, that the PTC is an improper benchmark because customers value products for reasons other than price, and

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[282] OCA M.B. at 41.

[283] *Id.*

[284] *Id.*

[285] *Id.* at 41-42.

[286] EGS Parties M.B. at 14-19; RESA M.B. at 55-63; Town Square M.B. at 27-40.

[287] *Id.*

that suppliers should continue receiving POR regardless of the rates they charge because POR facilitates competition.[288]

These arguments fundamentally mischaracterize FE PA's proposal as prohibitive as EGSs can still charge rates above the PTC, offer innovative products, and serve customers within FE PA's service territory.[289] FE PA's proposal also does not eliminate utility consolidated billing.[290] Rather, it simply conditions access to one particular utility-administered collection mechanism upon suppliers accepting responsibility for the collection risks associated with their own pricing decisions.[291] Suppliers remain free to market renewable products, long-term fixed-price contracts, or other value-added offerings above the PTC.[292] If they choose to do so, however, they may also be required to assume the financial risks associated with those products instead of shifting those risks to the utility and its customers through the POR program.[293] As OCA witness Alexander correctly testified, nothing prevents suppliers from developing their own billing and collection systems for products that exceed the PTC; what they seek is continued access to FE PA's billing infrastructure regardless of the prices they charge.[294] In fact, suppliers already provide separate billing and collection services for commercial and industrial customers within FE PA's service territory.[295]

RESA's and the EGS Parties' assertions that POR is an "essential" component of Pennsylvania's competitive market is similarly unpersuasive. The OCA does not dispute that the Commission has historically recognized the value of POR in facilitating retail

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[288] *Id.*

[289] OCA M.B. at 43.

[290] *Id.* at 42-43.

[291] *Id.*

[292] *Id.*

[293] *Id.*

[294] *Id.*

[295] *Id.* at 44.

competition.[296] However, nothing in the Competition Act, Commission regulations, or prior Commission orders requires that FE PA implements a POR or requires that the POR remains available on identical terms regardless of evolving market conditions or documented consumer harm. Rather, Section 69.1814 of the Commission's regulations only asserts that "[t]he public interest would be served by *consideration* of an EGS receivables purchase program in each service territory."[297] Accordingly, FE PA can make revisions to its POR program as it deems appropriate that serve the public interest, not the interests of EGSs.

The record supports that FE PA's proposed changes to the POR program is in the public interest. As the OCA demonstrated in its Main Brief, FE PA residential shopping customers paid approximately $82 million more in generation charges during 2025 than they would have paid under default service.[298] Those excessive supplier charges contribute to higher arrearages, increased collection activity, uncollectible expense, and broader affordability concerns.[299] When those charges are billed through utility consolidated billing and purchased through POR, suppliers avoid the very collection risks created by their own pricing decisions.[300] FE PA's proposal appropriately realigns those incentives by requiring suppliers charging above the PTC to internalize those risks rather than transferring them to the utility and ultimately its customers.[301]

Town Square's argument that the proposal improperly uses the PTC as a benchmark also misses the point.[302] The OCA has never argued that any supplier price above the PTC is unlawful or inherently unreasonable. Rather, the PTC serves as an objective benchmark

[296] 52 Pa. Code § 69.1814.

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

[298] OCA M.B. at 42.

[299] *Id.*

[300] *Id.*

[301] *Id.*

[302] Town Square M.B. at 35.

for determining when FE PA should be required to assume the financial risks associated with collecting supplier charges.[303] When suppliers elect to charge prices exceeding default service, it is reasonable that they also bear the corresponding collection risk created by those pricing decisions.[304]

Accordingly, the Commission should reject the arguments advanced by RESA, Town Square, and the EGS Parties and approve FE PA's proposed modifications to the POR program.[305] The proposal does not restrict customer choice or prohibit competitive products.[306] It simply ensures that participation in a utility-sponsored billing and collection program remains consistent with the public interest by protecting FE PA's customers from subsidizing the collection risks associated with supplier products priced above default service.[307]

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[303] OCA M.B. at 42.

[304] *Id.*

[305] *Id.* at 41.

[306] *Id.* at 43.

[307] *Id.* at 42.

VII. CONCLUSION

The OCA's positions on the contested issues in this proceeding are supported by substantial evidence and are in the public interest for the reasons outlined above. The parties that have not joined the Settlement failed to satisfy their burden of proof as proponents of an order. For the reasons set forth in its Main and Reply Briefs, the OCA respectfully requests that the Commission approve FE PA's DSP VII as modified by the Settlement. The Settlement ensures that FE PA will meet its statutory responsibilities to procure a default service portfolio that is designed to ensure service at least cost over time.

Respectfully submitted,

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