PULP
PENNSYLVANIA
UTILITY LAW PROJECT

July 22, 2026

Via Email Only

The Honorable Mark A. Hoyer
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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

CAUSE-PA Reply Brief

Greetings, Your Honors -

Attached, please find the **Reply Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)**, which is being circulated in accordance with the litigation schedule established in the above noted proceeding, as follows:

As indicated on the attached Certificate of Service, service on the parties was accomplished by email only.

Respectfully submitted,

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CC: Secretary Matthew Homsher (Via E-File: Cover Letter and Certificate of Service Only)
Certificate of Service

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of **Reply Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)**, upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54.

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Date: 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 THROUGH MAY 31, 2031	:	**DOCKET NO. P-2026-3060298**

REPLY BRIEF OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA)

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I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, files this Reply Brief in opposition to the Main Briefs of various electric generation suppliers and their trade association (referred to collectively as supplier intervenors),[1] and in support of the Joint Petition for Non-Unanimous Settlement (Settlement).

In their respective Main Briefs, the supplier intervenors collectively ignore substantial and unrefuted evidence of material economic harm to residential consumers caused by existing market programs and structures, misconstrue FE PA's proposed consumer protections, and misinterpret applicable law and Commission policy. CAUSE-PA stands firmly by the arguments advanced in its Main Brief and urges Deputy Chief Administrative Law Judge (DCALJ) Mark A. Hoyer, Administrative Law Judge (ALJ) Erin L. Gannon, and the Pennsylvania Public Utility Commission (PUC or Commission)

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[1] In addition to the supplier's trade association, the Retail Energy Supply Association (RESA), the following supplier intervenors filed three joint Main Briefs in this case: Town Square Energy East, LLC (TSE) and WGL Energy Services (WGL) (collectively TSE/WGL); Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. (collectively, Constellation); and Shipley Choice, LLC and Interstate Gas Supply, LLC (collectively, Shipley/IGS).

to approve the Joint Non-Unanimous Settlement and to disregard the unsupported arguments advanced by the supplier intervenors in this case.[2]

A. Procedural History

CAUSE-PA has no response to the procedural history asserted by other parties.

B. Non-Unanimous Settlement

The supplier intervenors uniformly oppose the proposed Settlement, though they collectively fail to articulate a reasonable basis in law or fact for rejecting narrow and targeted rules to protect consumers from substantial economic harm and other negative consequences driven by the current paradigm. The harm documented in the record revealed that residential shopping customers have been charged $888 million in excessive rates, resulting in materially higher termination rates and uncollectible expenses.[3] The settlement creates meaningful reform that narrowly addresses the harms demonstrated in the record. There are no alternatives on the record in this proceeding capable of resolving

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[2] CAUSE-PA incorporates by reference the Joint Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs, filed by the settling parties on July 10, 2026.

[3] CAUSE-PA MB at 8-12; CAUSE-PA St. 1 at 16-17 & Exhibit 1. In 2025, termination rates for residential customers served by a retail supplier ranged between 14-22% across FE PA's four divisions, compared to just 1-3% for residential default service customers. In the same year, on a per customer basis, supplier related uncollectible expenses were more than two times higher in Met-Ed and West Penn divisions and more than three times higher in Penelec and Penn Power divisions. CAUSE-PA St. 1-R at 17-18, 24, T.7 & Exhibit 1-R.

this clear harm, which is disproportionately impacting the health, safety, and wellbeing of low income households across FE PA's service territory.[4] CAUSE-PA will address the supplier intervenors' lack of evidentiary and legal support for their positions in opposition to the substantive provisions of the proposed Settlement below, in the substantive sections of this Reply Brief.

In addition to unsupported objections about the substance of the proposed Settlement, several supplier intervenors levied meritless attacks on various procedural aspects of the proposed Settlement, which CAUSE-PA will address briefly in this section.

First, Shipley and IGS assert the non-unanimous settlement is "dubiously named" – suggesting the very idea of non-unanimous settlement is morally suspect.[5] There is nothing "dubious" about the proposed Settlement. The Commission's enumerated policy statement explicitly encourages partial settlements, which it defines as: "a comprehensive resolution of all issues <u>in which less than all interested parties have joined</u>."[6] The Commission's regulations also explicitly require settlements to identify the position of all parties – including those in opposition thereto – and provide opposing parties the opportunity to object.[7] These rules clearly contemplate non-unanimous settlement proposals, and there is nothing dubious about the settling parties' proposal to resolve all issues in this case –

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[4] CAUSE-PA St. 1 at 10-14, 31-32 & Exhibit 2.

[5] Shipley/IGS MB at 3.

[6] 52 Pa. Code § 69.401 (emphasis added).

[7] 52 Pa. Code § 5.232.

notwithstanding the objections of the supplier intervenors. As discussed in its Statement in Support and Main Brief and further explored in the substantive sections of this Reply Brief, CAUSE-PA asserts that each provision of the proposed Settlement is supported by substantial record evidence and is consistent with all applicable law and policy of the Commonwealth.

In their jointly filed Main Brief, TSE and WGL make much ado about the fact that the proposed Settlement is joined by six parties, and notes that just three of the signatory parties (FE PA, CAUSE-PA, and OCA) presented evidence or testimony regarding the supplier issues in this case.[8] In advancing this bean-counting exercise, TSE and WGL fail to recognize that only two of seven supplier intervenors – TSE and RESA – filed any testimony or evidence in this case. And, while TSE filed direct testimony, it did not file any subsequent rebuttal or surrebuttal testimony in defense of its positions – despite the fact that TSE's positions were thoroughly rebutted by FE PA, CAUSE-PA, and OCA in subsequent rounds of testimony. Applying TSE and WGL's own confounding logic, one might conclude that greater credence should actually be afforded the proposed Settlement because a greater number of settling parties advanced record evidence in support of the supplier-related proposals contained therein. But, of course, this entire line of argument is without merit. When reviewing a proposed Settlement, the Commission reviews the

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[8] TSE/WGL MB at 5-6.

substantive merits of terms therein and decides based on application of law and policy to the factual record in the case – not on the number of parties on one side or the other.

TSE and WGL further argue that the proposed Settlement "achieves none of the policy goals underlying the Commission's preference for settlements."[9] TSE and WGL submit that the proposed Settlement does not narrow the issues in this case or lessen the time, expense, and resources associated with evidentiary hearings or subsequent phases of litigation and is therefore not aligned with Commission policy promoting settlement.[10] This argument is, yet again, without merit. The proposed Settlement in this case resolves all issues as between the settling parties and, in doing so, substantially narrowed the number of disputed issues, resolved conflicting positions of the settling parties, and reduced the resources expended in preparation for and during evidentiary hearings and through briefing – resulting in substantial preservation of resources. Two days were scheduled for evidentiary hearings to allow for cross examination of a multitude of witnesses, yet hearings were narrowed to just a few hours and multiple witnesses were excused – savings thousands of dollars in billable hours and travel expenses for counsel, witnesses, and the ALJs.

Finally, Constellation and RESA each take a similarly meritless swipe at the procedural posture of the proposed Settlement, asserting: "If the Commission determines that any material provision is unlawful, unreasonable, unsupported by substantial evidence,

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[9] TSE/WGL MB at 5.

[10] TSE/WGL MB at 5.

or inconsistent with the public interest, rejection of the Non-Unanimous is warranted."[11] It is certainly CAUSE-PA's position that the settlement – in its entirety – is supported by substantial evidence and in the public interest and thus should be approved by the Commission without modification. Nevertheless, this urging by CAUSE-PA and other settling parties does not change the Commission's authority to modify narrow aspects of a proposed Settlement – nor does it disrupt the rights of the settling parties to withdraw from the Settlement if the Commission modifies or amends the terms contained therein.

C. Legal Standards

CAUSE-PA stands firmly on its analysis of the various legal standards outlined in its Main Brief. While CAUSE-PA does not respond to each of the supplier intervenors' retelling of the law, it responds directly to RESA's misapplication of Commonwealth Court precedent regarding the applicable standard for reviewing proposals related to the competitive retail energy market in Pennsylvania.

RESA asserts in its Main Brief that any changes to the current competitive market framework "require particular justification" – arguing that proponents of any changes to a market rule or program "must demonstrate that the restriction is necessary because an

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[11] Constellation MB at 2-3. RESA makes a similar claim, arguing: "As the Joint Petition seeks approval without modification, rejection of any of these terms supports rejection of the entire Settlement." RESA MB at 5.

actual harm exists and that no reasonable alternative exists to address that harm."[12] These assertions grossly overstate the applicability and scope of this court-established standard.

First, the Commonwealth Court has made it clear that this additional standard only applies where there is substantial record evidence demonstrating that a proposal is anti-competitive and would actually limit choice.[13] Despite the supplier intervenors' arguments to the contrary, the record clearly demonstrates that none of the market proposals included in the proposed Settlement are anti-competitive or would otherwise limit choice. To the contrary, there is substantial record evidence that each of the market-related proposals advanced by the settling parties would preserve direct access to the competitive market and would help restore consumer trust and confidence in the market – while at the same time introducing reasonable and narrowly tailored rules designed to prevent certain and substantial harm to residential and low income consumers.[14]

RESA also misstates the evidentiary showing necessary to support a rule that constrains the competitive market. As the Commonwealth Court made clear in *RESA v. Pa. PUC*, the Commission is not required to consider every conceivable alternative – it is only

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[12] RESA MB at 8.

[13] CAUSE-PA v. Pa. PUC, 120 A.3d 1087, at 1107-1108 (Pa. Commw. Ct. 2015) (upholding a prohibition on early cancellation and termination fees for customers enrolled in PECO's Customer Assistance Program based on the lack of evidence that such a rule would be anti-competitive); see also RESA v. Pa. PUC, 185 A.3d 1206, at 1227 (Pa. Commw. Ct. 2018).

[14] CAUSE-PA MB at 8-12.

required to assess the viability of less restrictive alternatives proposed on the record to determine whether those alternatives will adequately alleviate the harm.[15] There is no obligation on the parties advancing a particular proposal, or on the Commission in reviewing a particular proposal, to explore the potential existence of other alternatives not proposed by parties within the record. In this case, as explained further below, the supplier intervenors uniformly opposed FE PA's market-related proposals and denied the existence of harm.[16] While witnesses for RESA and TSE referenced hypothetical alternatives, neither advanced any implementable changes to the status quo capable of addressing the serious harms documented in this proceeding.[17] As such, the status quo is the only alternative

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[15] RESA v. Pa. PUC, 185 A.3d 1206, at 1228 (Pa. Commw. Ct. 2018) (upholding restrictions on low income shopping within the Customer Assistance Program based on the record in the case, and rejecting speculative arguments of RESA that other possible alternatives exist outside the record). As the Court in RESA explained:

> "Given the foregoing, we conclude that PUC did not err in finding that proponents of the CAP-SOP proved, on this record, that there were no reasonable alternatives to restricting competition. It is clear that after months of discovery and several rounds of testimony, the experts and industry leaders involved in this proceeding could conceive of only a single alternative to restricting competition, and this restriction was not a reasonable one. In short, substantial evidence supports the PUC's determination on the lack of reasonable alternatives to restricting competition."

Id.

[16] See, e.g., RESA MB at 11, 44; TSE/WGL MB at 34-40; Shipley/IGS MB at 17.

[17] See, e.g., RESA MB at 31 (suggesting the Commission order the parties to engage in yet another collaborative stakeholder process to consider issues within FE PA's current CRP, while allowing harm to continue unabated – despite the fact the collaborative held

advanced on the record that must be considered by the Commission in evaluating the market proposals supported by the settling parties.

D. Summary of Argument

The record in this case contains clear and uncontroverted evidence that residential customers served by retail suppliers in FE PA's service territory were charged over $888 million more than the applicable default service price over a 100-month period which, in turn, drove substantially higher termination rates and uncollectible expenses recovered from other residential ratepayers.[18] Low income customers served by retail suppliers were charged even higher rates than other residential shopping customers – with even more severe consequences to their health, safety, and wellbeing.[19]

The supplier intervenors use bombastic language in their Main Briefs to assail the reasonable proposals advanced in the proposed Settlement to address these certain and substantial harms, arguing the proposals are "market killers" that are "illegal and ill advised" and will "cripple the market."[20] Rather than offer alternative proposals to address demonstrated harm to residential and low income consumers, the supplier intervenors deny any harm has even occurred and argue strenuously to maintain the status quo.[21]

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in advance of this proceeding failed to produce any recommendations from participating suppliers (including RESA)).

[18] CAUSE-PA St. 1 at 15-25; CAUSE-PA St. 1-R at 13-19.

[19] CAUSE-PA St. 1 at 10-14, 31-32 & Exhibit 2.

[20] See Shipley/IGS MB at 8.

[21] CAUSE-PA St. 1 at 16-17 & Exhibit 1.

As discussed further below, the Commission should disregard the unsupported and self-serving arguments advanced by the supplier intervenors in their respective Main Briefs. The terms of the proposed Settlement create a clear and appropriately narrow pathway to address proven harm and would amend FE PA's default service plan and related programs, rules, and terms and conditions of service without impacting direct market access. As such, CAUSE-PA continues to submit that FE PA's default service plan and related proposals, as modified by the proposed Settlement, are just, reasonable, and squarely in the public interest – in conformance with all applicable laws and policies – and should be approved without modification.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

CAUSE-PA has no further response to the arguments raised by other parties on this issue and stands by its assertion that FE PA's default service procurement and implementation plans, as modified by the proposed Settlement, are reasonably designed to provide reliable service and produce default service rates at the least cost over time – in conformance with existing law and policy, and based on substantial record evidence.[22]

[22] 66 Pa. C.S. § 2807 (e).

III. CLASSIFICATION OF NON-RESIDENTIAL DEFAULT SERVICE CUSTOMERS

CAUSE-PA has no further response to the arguments raised by other parties on this issue and stands by its assertion that the provisions in the proposed Settlement are in the public interest and supported by substantial evidence in this case.

IV. RATE DESIGN AND COST RECOVERY

CAUSE-PA has no further response to the arguments raised by other parties and stands by its assertion that the provisions in the proposed Settlement are in the public interest and supported by substantial evidence in this case.

V. CUSTOMER REFERRAL PROGRAM

The proposed Settlement provides that FE PA's CRP will terminate on May 31, 2027, consistent with the terms of the Commission approved settlement in FE PA's prior DSP proceeding, and affirms FE PA's decision to not implement a successor CRP in the current DSP proceeding.[23] As explained in CAUSE-PA's Main Brief, there is no evidentiary basis to force FE PA to continue a voluntary, market-enhancement program that has caused demonstrable harm to participants.[24]

In their respective Main Briefs, RESA and TSE/WGL argue that the Commission should reject the provisions of the proposed Settlement and require FE PA to continue its

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[23] Joint Petition at 17, para. 63-63.

[24] CAUSE-PA MB at 14-17.

current CRP.[25] None of the other supplier intervenors affirmatively supported continuation of the CRP in their respective Main Briefs.[26]

It is important to be clear from the outset that FE PA did not propose to terminate the CRP in this proceeding. FE PA's existing CRP will terminate on May 31, 2027, pursuant to the terms of the Commission approved settlement in its last DSP. In this case, FE PA did not propose a successor program – nor was it obliged to do so.[27] As such, FE PA does not carry the burden of proof on this issue because they did not make an affirmative proposal regarding implementation of a referral program in this proceeding. As the sole proponents of a successor CRP, modeled after the existing CRP, TSE/WGL and RESA bear the burden of proof that resurrection of the existing program is just, reasonable, and in the public interest based on substantial record evidence. TSE/WGL and RESA have not met this burden.

RESA and TSE/WGL argue that the CRP resulted in savings for participants during the 12-month program term – though neither acknowledge evidence that hundreds of CRP participants roll passively onto a higher cost contract at the end of the initial CRP term, eroding any savings achieved.[28] To the contrary, TSE/WGL argue that "[n[either

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[25] RESA MB at 28-31; TSE/WGL MB at 9-13; see also Joint Petition at 17, para. 63-63; CAUSE-PA MB at 14-15.

[26] Constellation MB at 14; Shipley/IGS MB at 9.

[27] CAUSE-PA MB at 15; see also 52 Pa. Code § 69.1815.

[28] TSE/WGL MB at 11-13; RESA MB at 28-31.

FirstEnergy nor the other opponents of the competitive retail markets (OCA and CAUSE-PA) provided any evidence whatsoever that the CRP has harmed customers."[29] To be clear: CAUSE-PA is not an "opponent of the competitive retail markets" – CAUSE-PA is, however, a strong proponent of retail market improvements to protect low income customers from the unbridled consumer abuses that are rampant across the current market structures – producing shockingly high rates of involuntary terminations.[30] Contrary to TSE/WGL's bald assertions, CAUSE-PA and OCA supported FE PA's decision not to propose a successor CRP, as memorialized in the proposed Settlement, based on substantial evidence of direct harm to hundreds of CRP participants at the end of the program term as well as a multitude of other factors explained more thoroughly in CAUSE-PA and OCA's Main Briefs.[31] This evidence of harm was not hypothetical, nor was it limited to "overall adverse outcomes" in the competitive market, as TSE/WGL asserted in its Main Brief.[32]

RESA and TSE/WGL each assert that FE PA, CAUSE-PA, and OCA did not evaluate alternative reforms that would allow the CRP to continue.[33] As explained at the

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[29] TSE/WGL MB at 9-10.

[30] In 2025, termination rates for residential shopping customers ranged between 14-22% across FE PA's four divisions, compared to just 1-3% for residential default service customers. CAUSE-PA St. 1 at 24, T.7.

[31] CAUSE-PA MB at 14-18.

[32] TSE/WGL MB at 10. Note that the quotation markets were included in TSE/WGL's Main Brief, though there was no citation for where this language originated.

[33] RESA MB at 30-31; TSE/WGL MB at 10.

outset of this Reply Brief, there is no obligation on the proponent of a market rule to evaluate less restrictive alternatives if the proposal is not anti-competitive and does not restrict choice.[34] The CRP is a voluntary market enhancement program, whereby FE PA serves as a conduit to the market – facilitating market entry without requiring the active engagement necessary for consumers to successfully navigate the competitive market at the end of the CRP term.[35] Elimination of the CRP does not in any way restrict customer choice. Customers who choose to be served by the retail supply market can do so without the CRP. If anything, its elimination may enhance informed choice and improve direct market access, moving away from reliance on FE PA as a conduit to the market.

Importantly, neither RESA nor TSE/WGL offered a concrete, implementable proposal that would address the documented harms associated with the current CRP while preserving the program. Rather than proposing specific program modifications, the supplier intervenors merely speculate that some unidentified reform might improve outcomes at some future unspecified time through an undefined collaborative process. Indeed, RESA's own position illustrates the deficiency of its case:[36]

> Mr. Lacey does not contend that the current CRP is perfect. Rather, he recommends that if supplier participation has declined, the Commission should direct FE PA and stakeholders to determine why and develop improvements to the program. If customer education can be enhanced, enhance it. If supplier participation can be increased, improve it. Those possibilities are illustrative, not exhaustive.[37]

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[34] See supra section I.C (Legal Standards).

[35] CAUSE-PA MB at 16-17.

[36] RESA MB at 30.

[37] RESA MB at 30-31.

This is not substantial evidence supporting continuation of the CRP. It is an acknowledgement that the existing program is deficient, coupled with speculation that unidentified future improvements might exist. The Commission cannot reasonably reject the Settlement in favor of hypothetical reforms.

The inadequacies of RESA's recommended "possibilities" are particularly significant because FE PA has already pursued many of the very same concepts RESA's witness mused about. Following FE PA's prior DSP proceeding, the program was subjected to additional disclosures, collaborative review processes, and improved consumer information and education intended to improve customer outcomes and increase engagement.[38] Yet the record before the Commission in this proceeding demonstrates that these efforts did not eliminate the fundamental problems identified by FE PA, OCA, and CAUSE-PA – nor did they generate meaningful supplier participation.[39] Furthermore, none of the participants in FE PA's CRP collaborative, including RESA representatives,

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[38] Petitions of MetEd, Penelec, Penn Power and West Penn Power for Approval of Its Default Service Plan for the Period from June 1, 2023 through May 31, 2027, Recommended Decision, Docket Nos. P-2021-3030012, -13, -14, & -21, at 37-39 (order entered June 29, 2022) (outlining numerous required CRP reforms, in addition to the collaborative).

[39] CAUSE-PA St. 1 at 28; OCA St. 2 at 6; FE PA St. 3 at 11.

recommended continuation of the program or proposed a successor program for inclusion in FE PA's DSP VII.[40]

RESA and TSE/WGL ask the Commission to force continuation of a voluntary program that is unsupported by record evidence, has proven to cause harm, and was not recommended through the prior collaborative. The Commission should roundly reject this request.

The weight of the record evidence is clear that the CRP has not achieved the objectives that originally justified its creation.[41] Participation is minimal, supplier interest has collapsed, and short term savings demonstrably give way to higher prices for participants – exposing participants to greater risk of termination and other ratepayers to higher uncollectible expenses. The Choice Act requires direct access to the competitive market, it does not require FE PA to indefinitely operate a utility-run referral mechanism. This optional retail market enhancement program should cease operations on May 31, 2027, without a successor program, as contemplated by the settlement terms in FE PA's prior DSP proceeding and the terms of the proposed Settlement in this proceeding. [42]

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[40] CAUSE-PA St. 1 at 28; FE PA St. 4 at 11-12. This collaborative process has held in advance of FE PA's DSP, with the express intent of determining whether data supported a proposal to continue the CRP or to advance a successor program. CAUSE-PA St. 1 at 28; FE PA St. 4 at 11-12.

[41] CAUSE-PA St. 1 at 15-25 & Exhibits 1-3; CAUSE-PA 1-R at 17-18 & Exhibit 1-R.

[42] CAUSE-PA St. 1 at 28; Joint Petition at 17, para. 63-63.

VI. SUPPLIER COORDINATION TARIFF CHANGES AND RETAIL SHOPPING ISSUES

The supplier intervenors uniformly oppose FE PA's proposed supplier coordination tariff amendments and related procedural market changes.[43] This includes provisions of the proposed Settlement strengthening consent and POR rules. In support of their positions, the supplier intervenors advance the general arguments that the proposals violate the slamming provisions of the Public Utility Code, conflict with Commission regulation, lack record evidence of harm, and will harm consumers and the market. However, they fail to rebut the central factual findings in the record:

- Over a 100-month period, residential shopping customers were charged over $888 million more than the applicable default service rate over a 100-month period, and confirmed low income shopping customers were charged disproportionately higher rates than other residential shopping customers.[44]

- In 2025, residential shopping customers were terminated at rates as high as 22%, compared to just 3% for residential default service customers.[45]

- In 2025, uncollectible expenses were between 2-3 times higher for residential shopping accounts compared to default service accounts.[46]

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[43] RESA MB at 31-63; TSE/WGL MB at 13-39; Constellation MB at 9-14; Shipley/IGS MB at 9-19.

[44] CAUSE-PA St. 1 at 23-24; CAUSE-PA Exhibits 1-3.

[45] CAUSE-PA St. 1 at 24-25.

[46] CAUSE-PA St. 1-R at 18.

The supplier intervenors devote hundreds of pages to defending existing retail market structures, yet they never present a credible alternative for addressing these harms. Instead, the supplier intervenors deny, blame, and minimize documented consumer experience.

RESA broadly argues that the settling parties did not explore other alternatives that may be less restrictive to the proposals advanced in this case.[47] This argument twists the applicable legal standard. As explained at the outset of this Reply Brief, the Commission is only obliged to consider less restrictive alternatives if a proposal is anti-competitive or otherwise restricts direct access to the market.[48] Strengthening consent requirements and POR rules will *strengthen* the competitive market, not weaken it – restoring trust and accountability in the marketplace and eliminating supplier subsidies paid for by residential ratepayers in the form of higher uncollectible expenses.[49] These proposed market improvements do not constrain competition and are fully compliant with and in furtherance of the Public Utility Code and Commission regulation.

Even if the proposals were determined to pose a potential restraint on the competition, there is nevertheless ample record evidence to support each proposal and there

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[47] See RESA MB at 42, 50, 53.

[48] CAUSE-PA v. Pa. PUC, 120 A.3d 1087, at 1107-1108 (Pa. Commw. Ct. 2015) (upholding a prohibition on early cancellation and termination fees for customers enrolled in PECO's Customer Assistance Program based on the lack of evidence that such a rule would be anti-competitive); see also RESA v. Pa. PUC, 185 A.3d 1206, at 1227 (Pa. Commw. Ct. 2018).

[49] CAUSE-PA St. 1-R at 25-26.

are no viable alternatives on the record that are otherwise capable of addressing the substantial harm documented in this case. It is not the obligation of the parties or the Commission to assess the viability of hypothetical alternatives not proposed on the record.[50] While suppliers had the opportunity to propose alternatives, they chose to remain rooted in the status quo – denying plain evidence of harm and minimizing consumer experience in the marketplace.

The fact is, excessive charges for residential and low income shopping customers are driving substantially higher rates of involuntary terminations and excessive levels of uncollectible expenses – unnecessarily increasing rates for all residential ratepayers. The market proposals outlined in the proposed Settlement are narrowly tailored to address the harms identified in the record while preserving direct access to the retail markets. As such, the proposed modifications to existing rules outlined in the proposed Settlement are just, reasonable, and in the public interest and should be approved.[51]

A. Return of Customers to Default Service at Contract Expiration

The proposed Settlement adopts FE PA's proposal to ensure that customers are making an affirmative choice to pay the rate charged by suppliers at the expiration of a

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[50] RESA v. Pa. PUC, 185 A.3d 1206, at 1228 (Pa. Commw. Ct. 2018).

[51] The Choice Act does not demand "unbridled competition" – to the contrary, the Act itself contains a multitude of priorities that sometimes conflict. See CAUSE-PA v. Pa. PUC, 120 A.3d 1087 (Pa. Commw. Ct. 2015); see also 66 Pa. C.S. §§ 2802 (10), 2803, 2804 (9), 2807 (d), 2809 (e). Beyond the Choice Act, the Public Utility Code likewise contains competing priorities that must be balanced to advance the public interest.

fixed price contract rather than passively rolling onto a rate. This narrowly tailored market rule preserves and honors retail choice, ensuring consumers retain direct access to the competitive market while implementing safeguards to help reduce high termination rates, uncollectible expenses, and excessive rates. [52]

The supplier intervenors argue that this proposal creates an unreasonable preference for default service, constitutes "slamming" in violation of the Choice Act, is inconsistent with Commission regulations, lacks record evidence, and harms consumers and the market.[53] As discussed above, these arguments rest on a fundamental misunderstanding of the proposal, an incomplete summary of the law, and misleading conclusions about the record evidence.

i. Requiring affirmative consent is not "slamming" and is consistent with the Choice Act.

The supplier intervenor parties argues that the proposal to return customers to default service at the expiration of their contract absent affirmative consent constitutes "slamming" in violation of the Choice Act.[54] This assertion misapprehends the terms *choice* and *consent* and the role of default service as a non-competitive backstop service available to consumers that elect not to shop.

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[52] CAUSE-PA MB at 20-22.

[53] RESA MB at 31-48; TSE/WGL MB at 13-22; Shipley/IGS MB at 9-12; Constellation MB at 9-14.

[54] <u>See</u> RESA MB at 37-40; Constellation MB at 11; Shipley/IGS at 10-11.

The proposal at issue is not "slamming" and does not switch customers from one supplier to another without consent. Rather, it establishes the procedure if a customer does not provide consent to a new product offering at the end of a supplier contract term. Pursuant to the Choice Act, an EDC may not change a customer's *supplier* absent their express consent.[55] Default service, however, is not a competing supplier. It is a statutorily required backstop available when a customer has not selected a competitive product.[56]

By requiring affirmative consent to a new product, the proposed Settlement advances the core principles of the Choice Act. Customers retain unfettered access to the competitive market and remain free to choose any supplier and any product, at any time. The only condition is that the choice remain the customer's, as evidenced by their express consent. What suppliers lose is not customer choice, but the ability of the supplier to select a new price or product of their choosing after a customer's original contract expires and hope that the customer does not notice the change in terms.

The supplier intervenors argue that the customer's agreement to the original contract constitutes continuing consent, pointing to other industries newspapers, magazines, and streaming services that often use auto-renew provisions.[57] Unlike newspapers and magazines, "energy is an essential service that directly impacts health, safety, and

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[55] 66 Pa. Code § 2807(d)(1).

[56] 66 Pa. Code § 2807(e).

[57] RESA MB at 47.

habitability."[58] As CAUSE-PA's witness Patrick Cicero explained, "the price risk is materially greater and less predictable, exposing consumers to potentially extreme consequences if they forget to act."[59] There are also substantial systemwide costs when a consumer is charged rates they cannot afford which further justify an affirmative consent requirement to any new rate.

When a customer consents to a new contract, they agree to a certain price for a fixed duration of time. They have no idea what the price will be at the end of their contract term. The provision of written disclosure at the end of the contract is not akin to affirmative choice or consent. Indeed, as Mr. Cicero testified, "notice is not consent" – and the lack of true consent to new contract terms has proven disastrous for consumers.[60]

The tariff changes adopted by the settling parties ensure that customers affirmatively choose the price they will pay for essential home energy services. At all times, the customer is free to choose to remain with their current supplier or choose another supplier. On the other hand, the status quo supported by supplier intervenors is insufficient to ensure consumers are knowingly choosing to pay higher rates. As discussed at length in its Main Brief, the evidence in this case shows clearly that residential and low income customers that receive service from a competitive supplier are charged substantially higher rates and,

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[58] CAUSE-PA St. 1-R at 25.

[59] CAUSE-PA St. 1-R at 25-26.

[60] CAUSE-PA St. 1-R at 26.

in turn, face substantially higher rates of involuntary termination. Nobody *chooses* to be involuntarily terminated, and it strains credulity to suggest otherwise.

ii. FE PA's request for waiver of section 56.10(3) meets the applicable standard and no further waiver is required.

The supplier intervenors argue that FE PA should not be granted a waiver of section 54.10(3), and that the appropriate forum for such a request is in a statewide proceeding.[61] TSE and WGL go further, arguing that FE PA's waiver request actually constitutes a request for repeal or amendment, which would require FE PA to meet the stringent requirements of the Commonwealth Documents Law and the Regulatory Review Act.[62]

FE PA's request for waiver is appropriate in this case and is in the clear public interest. There is documented harm occurring in FE PA's service territory that is real, current, and ongoing, and the need for comprehensive reforms is undeniable. While the supplier intervenors may prefer to ensnare meaningful consumer protections in a lengthy statewide policy inquiry, FE PA's customers should not have the evidence ignored in this proceeding with the vague promise that relief may come at some point in the future.[63] As such, CAUSE-PA submits that the supplier intervenors' attempts to shunt this harm to an undefined future statewide policy proceeding should be denied.

Moreover, there is a clearly defined legal standard for a regulated entity to request waiver of a rule or regulation as applied to that entity, which FE PA has followed, and there

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[61] RESA MB at 36; TSE/WGL MB at 16-19;

[62] TSE/WGL MB at 17-18.

[63] See CAUSE-PA St. 1-R at 14.

is no basis to the claim that FE PA must instead seek to amend or repeal the regulation.[64] Amendment or repeal would implicate other utility service territories, but FE PA's request is far more narrow – applying only to FE PA – and is based on the documented, clear factual record developed in this case. It is also temporary in nature, as FE PA's waiver would be subject to review in FE PA's next DSP.

RESA argues that FE PA's proposals must fail because it did not request waiver of Chapter 57 switching regulations and cites section 57.178 as the basis for its claim.[65] Section 57.178 provides that Chapter 57 "does not apply with the customer's service is discontinued by the EGS and subsequently provided by the default service provider because no other EGS is willing to provide service to the customer."[66] RESA argues generally that returning a customer to default service at the conclusion of a contract, absent affirmative consent to renewal, "would authorize precisely the type of unauthorized supplier change the Competition Act and the Commission's anti-slamming regulations were designed to prevent."[67] However, RESA does not cite any specific regulations within Chapter 57 that would actually conflict with the proposals advanced in this proceeding, and CAUSE-PA is unable to locate a single provision that might be implicated. But as explained above, with regard to claims about slamming, default service is distinct from

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[64] 66 Pa. C.S. § 501(a).

[65] RESA MB at 40.

[66] 52 Pa. Code § 57.178.

[67] RESA MB at 40.

supplier service and is separately defined in both the Public Utility Code and Commission regulations.[68] CAUSE-PA does not dispute that the Chapter 57 switching regulations would still apply, but there is nothing in the record to suggest that the process proposed by FE PA at the conclusion of a contract would conflict with these rules in any way.

The record in this case clearly supports a finding that waiver of section 54.10(3) is in the public interest and supported by substantial evidence of harm to FE PA's residential and low income customers. Additional regulatory waiver is unnecessary to effectuate the proposals at issue in this case.

iii. The overwhelming record evidence of harm to consumers – especially low income consumers – was not credibly rebutted by the supplier intervenors.

Rather than acknowledge the harm consumers are experiencing and attempt to resolve that harm through reasonable reform, the supplier intervenors deny that harm is even occurring.[69] RESA specifically argues that default service is not an appropriate benchmark to measure pricing and laments the Commission's longstanding use of the term Price to Compare (PTC) to describe default service.[70]

The supplier intervenors largely avoid mentioning the extensive shopping-related termination and collections data presented in this case, instead attempting to discredit the

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[68] 66 Pa. C.S. § 2803; 52 Pa. Code § 57.178.

[69] RESA MB at 44-46;

[70] RESA MB at 45.

long-term monthly pricing data as a "point-in-time" and arguing that many consumers choose to pay higher rates.[71]

The little attention that RESA, TSE, and WGL pay to the data in their briefs are incorrect characterizations or attempts at distraction rather than rebuttal. For its part, RESA argues that uncollectible expense data showing substantially higher uncollectibles for residential shopping accounts is based on an accounting methodology, not actual dollars, and argues that FE PA maintains too many collections-related datasets – making it "difficult to conclude that any single metric, standing alone, provides sufficient basis for the significant competitive market restrictions FE PA proposes."[72] TSE and WGL make similar arguments regarding collections data, and attempt to further discredit the data by launching baseless allegations of differential treatment not found anywhere in the record.[73]

First, the default service price is an appropriate benchmark for comparison, aptly known as the Price to Compare. It is statutorily provided to consumers who choose not to shop as the "least cost to consumers over time" – allowing consumers to compare options available in the competitive market on an objective decision about the relative costs and benefits of a particular competitive offer.[74] "The PTC does not detract from the ability of consumers to make decisions about the competitive market, it adds to it – allowing

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[71] RESA MB at 46; Constellation MB at 13; Shipley/IGS MB at 10-11.

[72] RESA MB at 58-59.

[73] TSE/WGL MB at 36-38.

[74] CAUSE-PA St. 1-R at 7.

consumers to compare prices based on an objective benchmark that seeks to not always be the lowest price at any one point in time, but that is designed to be the least cost over time."[75]

Further, RESA's "point-in-time" argument is without merit. In this case, CAUSE-PA analyzed extensive monthly shopping data, which revealed that residential shopping customers were charged more than the default service price each and every month for a 100-month period from August 2017 through December 2025.[76] As Mr. Cicero explained:

> The comparative shopping data produced to date in this proceeding provides a longitudinal review of actual customer billing outcomes each month for a 100-month period. It is 100 points in time in a row that all tell the same $888 million story: customers in aggregate pay significantly more to be served at rates charged by EGSs as opposed to what they would have been charged at the applicable default service rate."[77]

The analysis of shopping charges in this case relative to the applicable default service rate was based on actual data, it was not a theoretical point in time comparison between isolated products as RESA suggests.

The accusations of RESA, TSE, and WGL regarding the accuracy of FE PA's collections data are also without merit. The manner in which FE PA allocates uncollectible expenses does not invalidate the accuracy of the data produced, and the existence of multiple collections data sets, measuring various aspects of collections performance, does

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[75] CAUSE-PA St. 1-R at 7; 66 Pa. C.S. § 2807(e)(3.4)(ii).

[76] CAUSE-PA Exhibits 1 & 2; CAUSE-PA St. 1-R at 6.

[77] CAUSE-PA St. 1-R at 5-6.

not invalidate individual data points. In advancing this argument, RESA fails to recognize that FE PA maintains various collections-related data points because those data points are required by the Commission to monitor FE PA's collections performance.[78]

Finally, the baseless allegation levied by TSE and WGL suggesting that high termination rates for residential shopping customers are the result of "targeted and discriminatory terminations of shopping customers" are wholly unsupported in the record. There is no factual basis in the record to support this allegation and it was not asserted by any party through record testimony or evidence – including TSE's own witness. In fact, TSE and WGL provided no rebuttal or surrebuttal testimony at all in response to the extensive analysis of the data presented by CAUSE-PA, OCA, and FE PA. TSE and WGL's concern is baseless and without evidentiary support. TSE and WGL had ample opportunity to raise this concern on the record but chose instead to wait until briefing to bring these serious allegations. In so doing, TSE and WGL violate basic principles of due process – depriving the parties of the ability to investigate and respond. As such, these baseless assertions must be ignored.

Ultimately, the extensive evidence of harm in this proceeding to residential and low income customers was not credibly rebutted by the supplier intervenors.

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[78] 52 Pa. Code § 54.75.

iv. The Commission's prior decisions cited by the supplier intervenors are inapposite.

RESA argues that the Commission has "repeatedly" rejected similar proposals to return customers to default service at the end of a contract period absent affirmative consent.[79] As support, RESA cites to the Commission's decision in prior PPL and PECO DSP proceedings as well as a recent decision regarding a request of local boroughs to implement an opt-out customer choice aggregation program.[80] These cases are distinguishable from the case at hand.

In the PPL and PECO DSP proceedings, the Commission's decision turned on its conclusion that evidence of high supplier pricing, without a further nexus to other evidence of harm, "was insufficient and inconclusive."[81] Notably, the Commission was explicit "that in future default service proceedings, any and all evidence [of harm] presented would be considered on a *de novo* basis."[82] Here, in this case, there is ample evidence of additional

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[79] RESA MB at 41-43.

[80] RESA MB at 41-43.

[81] Petition of PECO Energy Co. for Approval of Its Default Service Program for the Period from June 1, 2025 through May 31, 2029, Opinion and Order, Docket P-2024-3046008, at 23 (order entered Jan. 8, 2025) (discussing the Commission's rationale for its decision in both the PECO and PPL proceeding); see also PPL Elec. Utility Corp. for Approval of Its Default Service Plan for the Period June 1, 2021 through May 31, 2025, Opinion and Order, Docket No. P-2020-3019356 (order entered Dec. 17, 2020).

[82] Petition of PECO Energy Co. for Approval of Its Default Service Program for the Period from June 1, 2025 through May 31, 2029, Opinion and Order, Docket P-2024-3046008 (order entered Jan. 8, 2025)

harm in the form of substantially higher termination rates and uncollectible expenses associated with residential shopping accounts.[83] This evidence is substantial, was not credibly rebutted, and establishes a direct nexus between excessive supplier pricing and resulting involuntary termination and uncollectible expenses. It is simply inconsistent with the record evidence in this case that customers are choosing to pay higher prices that increase their risk of termination and debt owed to utilities at the end of their contract term. As noted above, nobody chooses involuntary termination. As such, CAUSE-PA urges the Commission to restore choice and uphold consent by approving the proposed Settlement.

The Commission's decision in response to a request by local boroughs to implement an opt-out community choice aggregation program is inapposite to the proposals at issue in this case. In that proceeding, the boroughs were seeking approval to switch residents of their respective boroughs to a competitive supply aggregation program *without* affirmative consent or any consent at all.[84] Here, the proposal is for FE PA to return customers to default service (not another supplier) absent explicit customer consent to new terms. As noted above, customers enter a contract for a specific term, they do not know what terms are offered at the end of that term and it should not pre presumed that these customers want

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[83] CAUSE-PA St. 1 at 23-24 & Exhibits 1-3; CAUSE-PA St. 1-R at 17-18 & Exhibit 1-R.

[84] Petition of the Boroughs of Camp Hill, Carlisle, Hatboro, Landsdowne, Media, Narberth, State College, and Swarthmore for a Declaratory Order Regarding the Implementation of Community Choice Aggregation, Opinion and Order, Docket No. P-2024-304963 (order entered Aug. 14, 2025).

to remain with their supplier at whatever offer is made without these customers opting in to a new contract. The settlement preserves customer choice because it empowers customers through the requirement that they opt in to a contract with a supplier rather than being required to opt out of a contract renewal. This proposal allows the default rate to, indeed, serve as the "default" for customers that have not made an affirmative choice.

Contrary to RESA's assertions, the cited orders do not create a binding precedent regarding proposals to return customers to default service at the conclusion of their contract absent affirmative consent. By the Commission's own express words, the Commission must consider the evidence in this case to the proposals advanced on a *de novo* basis – examining the extensive evidence of harm to residential and low income consumers and the reasonable, narrow, and targeted reforms advanced in this case to resolve that harm.

v. Maryland is not Pennsylvania.

RESA argues that recent competitive market changes in Maryland should inform the Commission's decision regarding FE PA's proposals. Specifically, RESA asserts that the Commission should reject the market proposals in this case because Maryland recently adopted "materially similar" proposals through legislation, which it claims resulting in a sharp decline in shopping rates.[85]

It should go without saying: Pennsylvania is not Maryland. Apart from vague assertions that the proposals in this case are "similar" to the proposals here, RESA did not

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[85] RESA MB at 49.

provide any specific analysis of the similarities and differences between Maryland's market structure and Pennsylvania's market structure.[86] Contrary to RESA's assertion, it was not the burden of FE PA, OCA, or CAUSE-PA to perform that analysis.[87]

B. Quarterly Affirmation for Variable Rate Contracts

In addition to facilitating affirmative choice at the end of a fixed term contract, the proposed Settlement adopts FE PA's proposal to require suppliers to provide an attestation of affirmative consent from consumers enrolled in a month-to-month variable rate contract.[88]

The supplier intervenors generally rely on the same arguments addressed in the prior section in response to this proposal,[89] to which CAUSE-PA offers the same response as incorporated herein. In addition, the supplier intervenors argue that amendments to the Commission's 2014 regulatory amendments following the Polar Vortex, which triggered extreme volatility in the competitive market and extensive harm to variable rate customers, are sufficient to address concerns raised in this proceeding.[90] RESA also argues generally that FE PA failed to provide sufficient details – including the cost of the proposal or who

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[86] CAUSE-PA St. 1-SR at 9.

[87] RESA MB at 49.

[88] Joint Petition at 18, para. 66.

[89] RESA MB at 52; TSE/WGL MB at 22-25; Constellation MB at 14; Shipley/IGS MB at 12-13.

[90] RESA MB at 51-52; TSE/WGL MB at 23.

would bear those costs.[91] RESA asserts that FE PA "was also required to demonstrate that no reasonable alternative exists before restricting competition and customer choice," which it claims FE PA failed to do.[92]

The Commission's regulations were last revised more than a decade ago, and have since proven insufficient to stem certain, substantial, and ongoing harm to consumers based on the record *in this case*.[93] As the record demonstrates, increased disclosures and education are no longer viable alternatives, as they have not worked to address the root cause driving higher rates and resulting high terminations and uncollectible expenses.[94] Indeed, after 12 years and $888 million in documented harm, it is time to implement more definitive rules to ensure consumers knowingly choose and affirmatively consent to variable rates.

C. Changes to Purchase of Receivables (POR) Program

The supplier intervenors uniformly oppose changes to FE PA's POR. As with the other market proposals discussed above, the supplier intervenors misconstrue the proposal, misapply the law, and ignore clear evidence of substantial harm.[95]

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[91] RESA MB at 53-54.

[92] RESA MB at 54.

[93] RESA v. Pa. PUC, 185 A.3d 1206, at 1228 (Pa. Commw. Ct. 2018).

[94] See CAUSE-PA MB at 7-12.

[95] See RESA MB at 54-63; TSE/WGL MB at 27-40.

In reality, the proposed changes to FE PA's POR contained in the proposed Settlement are reasonable and targeted in response to the harms reflected in the record; namely, excessive POR-related uncollectible expenses – *ranging between 25-49% higher than default service related uncollectible expenses* – are driving up rates for all residential customers.[96] The supplier intervenors did not credibly rebut this evidence of harm and did not advance any alternatives capable of addressing the same. As such, the terms of the proposed Settlement amending FE PA's POR should be approved.

i. Proposed POR rule revisions do not constitute rate regulation or rate discrimination.

The supplier intervenors argue that the proposed POR rule revisions would indirectly regulate supplier commodity prices and would "force suppliers to continually link their price offers to the ever-changing PTCs and wait for new PTCs to be announced before setting their own prices."[97] Shipley and IGS take this argument even further, asserting that the use of price as a condition of POR constitutes rate discrimination pursuant to section 1502 of the Public Utility Code.[98]

These assertions misconstrue the basic tenants of the proposal. Under the revised POR rules, suppliers remain free to offer any products they choose, at any price they choose, and with any additional services they choose. The only consequence is that suppliers choosing to charge rates that exceed the default service price must bear the

[96] CAUSE-PA St. 1-R at 17-18.

[97] TSE/WGL MB at 33; RESA MB at 62.

[98] Shipley/IGS MB at 15-16.

associated credit and collection risk. That is not rate regulation or rate discrimination, it is reasonable risk allocation. Residential consumers should no longer bear the risk of high supplier prices.

Section 1502 of the Public Utility Code forbids utilities from providing any "unreasonable preference or advantage" or "unreasonable difference as to service" – though it expressly provides for "the establishment of reasonable classifications of service." [99] There is no unreasonable preference or advantage or unreasonable difference as to service of offering POR on the same terms and conditions that FE PA bills its customers.

The distinctions in the proposed POR provisions are inherently reasonable, and are rationally related to documented differences in collections risks and payment outcomes. The record establishes substantially higher uncollectible expenses among shopping accounts and evidence that shopping customers pay materially higher prices.[100] Suppliers charging prices above the default service rate create a materially different risk profile than suppliers charging prices at or below the default service risk. Different treatment based on different risk is not unreasonable discrimination.

FE PA's POR proposal, as memorialized in the proposed Settlement, does not in any way restrict the prices that a supplier can charge or the products it offers to customers – nor does it restrict the ability of all suppliers to enjoy the benefits of utility consolidated

[99] 66 Pa. C.S. § 1502.

[100] CAUSE-PA St. 1- at 17-18 & Exhibit 1-R.

billing. It merely ensures that suppliers are not able to socialize the incremental collection risk associated with higher pricing.

ii. There is no credible evidence to rebut evidence that POR-related uncollectible expenses are substantially higher than uncollectible expenses associated with default service accounts.

As noted briefly above, RESA, TSE, and WGL attempt to discredit evidence of higher uncollectible expenses. These assertions lack credibility and record support.

First, RESA, TSE, and WGL argue that the uncollectible expense data is unreliable because they were calculated using an accounting methodology.[101] But there is nothing to suggest that the accounting methodology used to track uncollectible expenses for default service and POR-related accounts is flawed.

TSE and WGL further argue that uncollectible expenses associated with default service are actually contributing more to overall uncollectible expenses compared to shopping-related uncollectible expenses.[102] While technically true on *an aggregate basis,* this is only because there are more default service customers compared to shopping customers. CAUSE-PA's analysis compared uncollectible expenses on a *per customer* basis to ensure proportionality.[103]

RESA further argues that FE PA tracks too many datasets, and claims "the existence of those multiple datasets makes it difficult to conclude that any single metric, standing

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[101] RESA MB at 58-59; TSE/WGL MB at 36-39.

[102] TSE/WGL MB at 36.

[103] CAUSE-PA St. 1-R at 18

alone, provides a sufficient basis for the significant competitive market restrictions FE PA proposes.[104] As noted above, the Commission mandates EDCs to track these collections data points, and there is simply no basis to conclude that the existence of multiple datasets invalidates specific datasets.

TSE and WGL point to raw data produced in discovery regarding write-offs and payment troubled customers in an attempt to invalidate the uncollectible expense data.[105] None of this cited data was discussed or analyzed on the record, and TSE's own witness declined to enter any rebuttal or surrebuttal testimony into the record. Instead, legal counsel for TSE and WGL advances new analysis of raw data and arguments related thereto for the first time through briefing. Had TSE's witness properly raised this assertion in testimony, or made further inquiry through discovery, the reason for this variation in data could have been addressed on the record. It did not. TSE should not be permitted through briefing to analyze raw data and raise speculative factual assertions not otherwise in the record.

Ultimately, the suppliers failed to advance any credible record evidence capable of countering the overwhelming record evidence of harm to residential and low income customers detailed in this case. As a review, in 2025:

- Residential shopping customers were charged rates between 31-42% higher than the default service price across FE PA's four divisions.[106]

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[104] RESA MB at 58-59.

[105] TSE/WGL MB at 38-39.

[106] CAUSE-PA St. 1 at 21 & Exhibit 3.

- Low income shopping customers charged rates between 37-56% higher rates than the applicable default service price across FE PA's four divisions, even higher than residential shopping customers.[107]

- Termination rates for residential shopping customers ranged between 14-22% across FE PA's four divisions, compared to just 1-3% for residential default service customer[108]

- Average per customer uncollectible expenses associated with shopping accounts across FE PA's four rate districts in 2025 ranged between $23-38, compared to $8-$15 for uncollectible expenses associated with default service accounts.[109]

- Excessive rates of termination drive other adverse impacts on health, safety, and wellbeing of households across FE PA service territory – especially among low income and other vulnerable customer groups that already struggle profoundly to maintain energy to their home.[110]

There is insufficient evidence in the record to support TSE and WGL's arguments regarding other potential raw data points, and its attempt to inject unsupported and untested analysis at the briefing stage, without a developed factual record, should not prevail.

iii. There is no credible evidence that the POR rule revisions would restrict product offerings.

The supplier intervenors argue that the proposed POR changes will restrict product offerings.[111] However, none of the supplier intervenors provided testimony attesting to whether their own offerings would change if the POR were amended. In fact, TSE's own

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[107] CAUSE-PA St. 1 at 21 & Exhibit 3.

[108] CAUSE-PA MB at 9; CAUSE-PA St. 1 at 24, T.7.

[109] CAUSE-PA Exhibit 1-R.

[110] CAUSE-PA MB at 9; CAUSE-PA St. 1 at 10-15.

[111] TSE/WGL MB at 30-33.

witness admitted through discovery that it operates in Maine, where there is no POR program, though he provided no evidence to even suggest - much less prove - that TSE's products and operations in Maine are any different from its products and operations in Pennsylvania.[112]

TSE and WGL point to data presented by TSE's witness in direct testimony, arguing that many offers available on papowerswitch.com in April 2026 would have resulted in cost savings in June 2026, when FE PA's default service rate increased.[113] They submit that these products would not have been eligible for the POR in April, and argue that the lack of POR will cause these offers to disappear. This speculative argument is without merit.

As addressed in CAUSE-PA's rebuttal to TSE's witness, the offers cited contained multiple fees and charges that were not included in the per kWh offer – ranging between $9.95 and $14.95/month or $1/day.[114] There is simply no basis to conclude that any of the products offered in April were lower on an overall bill basis than the default service price in June.

The truth is, the changes proposed to the POR would not restrict product offerings in any way – nor would it restrict the ability of suppliers to take advantage of utility consolidated billing. The only change would be to appropriately shift the collections risk

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[112] CAUSE-PA St. 1-R at 22 & Appendix A-R.

[113] TSE MB at 32.

[114] CAUSE-PA St. 1-R at 13.

back to suppliers if they choose to offer rates that exceed the default service price at the start of a contract.

iv. POR is a subsidy to suppliers, not a benefit to consumers.

TSE and WGL argue that the POR subsidy provides a benefit to consumers by eliminating the need for suppliers to assess credit risk when making offers to customers.[115] They assert that "POR provides access to better rates to more customers, regardless of their income or credit status."[116] Essentially, TSE and WGL argue for "securitizing basic electric service to support the purchase of ancillary 'value added services' that a customer cannot objectively afford, based on their credit risk."[117]

Ultimately, "POR allows suppliers to act with impunity, charging excessive rates without regard to whether the customer is ultimately able to pay.… The reality is that ratepayers are left paying the price of supplier impunity in the form of higher termination rates and higher uncollectible expenses."[118]

v. FE PA's POR clawback has proven inadequate to stem ongoing harm through excessive uncollectible expenses.

RESA claims, in the face of evidence to the contrary, that FE PA's current POR clawback rules are a sufficient alternative to the proposed POR provisions in the Settlement and argues that FE PA should have explored ways to strengthen the clawback rules before

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[115] TSE/WGL MB at 29.

[116] TSE/WGL MB at 30.

[117] CAUSE-PA St. 1-SR at 9-10.

[118] CAUSE-PA St. 1-R at 21-22.

advancing the current POR proposal.[119] However, RESA stops short of proposing any viable alternatives – instead denying that harm has even occurred.[120] Specifically, RESA notes that "numerous alternatives the Commission could consider if it determines additional customer protections are warranted" and includes a quick punch-list of those possibilities. The entirety of RESA's rough-shod recommendations include: "preserving and improving the existing POR framework, enhancements to utility billing systems, supplier consolidated billing, outsourced billing arrangements, unbundling of default service functions, and other market-design enhancements that could be developed through a collaborative process." RESA's list of possibilities amounts to a supplier a wish-list, not implementable recommendations.

As explained in detail above, RESA misstates the applicable standard when reviewing proposals that may cause competition to bend. The standard requires only that the Commission to review the record to determine the availability of a less restrictive alternative *capable of addressing harm*.[121] There is no obligation on the parties to prove that they pursued all eventualities, only that the alternatives advanced on the record were duly considered to determine if they may be adequate to stem identified harm.

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[119] RESA MB at 59-60.

[120] RESA MB at 60.

[121] RESA v. Pa. PUC, 185 A.3d 1206, at 1228 (Pa. Commw. Ct. 2018).

There is simply no record evidence to suggest RESA's wish list contains any implementable proposals capable of addressing identified harm. As such, its arguments in this regard should be rejected.

vi. The requirement for rate-ready billing to participate in POR is supported by law.

RESA argues that there is no evidence to support the requirement that suppliers utilize rate-ready billing as a condition of POR participation. This is, again, untrue. This requirement is rooted in the Commission's prohibition on termination for non-payment of non-basic service charges.[122] When a supplier utilizes bill-ready billing, FE PA cannot differentiate between basic and non-basic charges, which can lead to the unlawful termination of households that fall behind on non-basic charges. Restricting the POR to rate-ready billing ensures compliance with this critically important provision of the Commission's regulations.

vii. The weight of the evidence supports the POR revisions included in the proposed Settlement.

The provisions of the proposed Settlement, memorializing FE PA's proposed POR rules, are appropriately measured and narrowly tailored to allow POR to remain available to suppliers that want the substantial benefit of guaranteed payment and alleviation of collections costs - while at the same time protecting residential consumers from bearing excessive collections costs. CAUSE-PA submits that the proposed POR rules within the

[122] 52 Pa. Code § 56.83.

proposed Settlement are supported by substantial evidence, will further the public interest, and should be approved without modification or delay.

VII. CONCLUSION

For the foregoing reasons, and as explained in further detail in its Statement in Support and Main Brief, CAUSE-PA urges DCALJ Hoyer, ALJ Gannon, and the Commission to approve the proposed Settlement in its entirety, without modification. The evidence of harm to residential and low income customers in support of the proposals contained in the proposed Settlement is not only substantial it is overwhelming. Contrary to the assertions of the supplier intervenors, the reforms contemplated in the proposed Settlement are firmly in the public interest and are fully compliant with and in furtherance of the Choice Act and, more generally, the Public Utility Code.

Respectfully submitted,
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