Stevens & Lee
17 N. Second Street, 16th Floor
Harrisburg, PA 17101
(717) 234-1090
www.stevenslee.com

T: (717) 255-7365
F: (610) 988-0852
michael.gruin@stevenslee.com

July 22, 2026

VIA ELECTRONIC FILING
Secretary Mattew Homsher
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Homsher:

Enclosed for filing please find the Public version of the Joint Reply Brief of Town Square Energy East, LLC and WGL Energy Services, Inc. in opposition to the Joint Petition for Non-Unanimous Settlement filed in the above-captioned matter. The Highly Confidential version of the Joint Reply Brief will be submitted through the Commission's Confidential Sharepoint portal.

Copies of this filing have been served in accordance with the attached Certificate of Service. The Highly Confidential version of the Joint Reply Brief is being served only on parties that have executed a Non-Disclosure Certificate in accordance with the Protective Order entered in this proceeding.

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

Best Regards,

STEVENS & LEE

Michael A. Gruin

Michael A. Gruin, Esq.

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY FOR APPROVAL OF ITS DEFAULT SERVICE PROGRAM FOR THE PERIOD JUNE 1, 2027 TO MAY 31, 2031	: : : : : : :	Docket No. P-2026-3060298

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the enclosed Joint Reply Brief upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL

Kenneth M. Kulak, Esq.* Brooke E. McGlinn, Esq. * Maggie E. Curran, Esq. * Morgan, Lewis & Bockius LLP 2222 Market Street Philadelphia, PA 19103-3007 ken.kulak@morganlewis.com brooke.mcglinn@morganlewis.com maggie.curran@morganlewis.com *Counsel for FirstEnergy Pennsylvania Electric Co.*	Tori L. Giesler, Esq. * Angelina Umstead, Esq. * FirstEnergy Service Company 2800 Pottsville Pike Reading, PA 19612-6001 tgiesler@firstenergycorp.com aumstead@firstenergycorp.com *Counsel for FirstEnergy Pennsylvania Electric Co.*
Harrison W. Breitman, Esq. * Olivia M. Spergel, Esq. * Katherine M. Kennedy, Esq. * Office of Consumer Advocate 5th Floor Forum Place 555 Walnut Street Harrisburg, PA 17101-1923 HBreitman@paoca.org OSpergel@paoca.org KKennedy@paoca.org *Counsel for OCA*	Taylor Speer, Esq. * Fox Rothschild LLP 2 West Washington Street Suite 1100 Greenville, SC 29601 tspeer@foxrothschild.com Karen Kemerait, Esq. * Fox Rothschild LLP 301 Hillsborough Street Suite 1120 Raleigh, NC 27603 kkemerait@foxrothschild.com Samuel W. Cortes, Esq. Ashley Beach, Esq. Fox Rothschild LLP 747 Constitution Drive, Suite 100 Exton, PA 19341

	scortes@foxrothschild.com Abeach@foxrothschild.com *Counsel for the Joint Solar Advocates*
Rebecca Lyttle, Esq. * Assistant Small Business Advocate Office of Small Business Advocate Forum Place 555 Walnut Street, 1st Floor Harrisburg, Pennsylvania 17101 relyttle@pa.gov *Counsel for OSBA*	Susan E. Bruce, Esq. * Charis Mincavage, Esq. * Matthew Garber, Esq. * Rebecca Kimmel, Esq. * McNees Wallace & Nurick LLC 100 Pine Street P.O. Box 1166 Harrisburg, PA 17108 sbruce@mcneeslaw.com cmincavage@mcneeslaw.com mgarber@mcneeslaw.com rkimmel@mcneeslaw.com *Counsel for MEIUG, PICA,* and *WPPII*
Melissa A Chapaska, Esq. * HMS Legal LLP 501 Corporate Circle, Suite 302 Harrisburg, PA 17110 machapaska@hmslegal.com *Counsel for Penn Renewables LLC*	Daniel B. Markind, Esq, Flaster Greenberg, PC 1717 Arch Street, Suite 3300 Philadelphia, PA 19103 Daniel.markind@flastergreenberg.com Mitchell H. Kizner, Esq. Flaster Greenberg, PC Commerce Center 1810 Chapel Avenue W Cherry Hill, NJ 08002 mitchell.kizner@flastergreenberg.com *Counsel for Dimension PA 1 LLC*
Elizabeth R. Marx, Esq. * Lauren N. Berman, Esq. * Ria M. Pereira, Esq. * John W. Sweet, Esq. * Levi A. Phillips, Esq. * Pennsylvania Utility Law Project 118 Locust Street Harrisburg, PA pulp@pautilitylawproject.org *Counsel for CAUSE-PA*	Todd S. Stewart, Esq. * HMS Legal LLP 501 Corporate Circle, Suite 302 Harrisburg, PA 17110 tsstewart@hmslegal.com *Counsel for Shipley Choice, LLC and Interstate Gas Supply, LLC*
Barry A. Naum, Esq. * Steven W. Lee, Esq. Spilman Thomas & Battle, PLLC 1100 Bent Creek Blvd., Suite 101 bnaum@spilmanlaw.com slee@spilmanlaw.com	Marsha Makel, Esq. * Constellation Energy Generation, LLC 1310 Point Street Baltimore, MD 21231 Marsha.makel@constellation.com Linda S. Kizuka, Esq. *

Jamie L. Martines, Esq. * Spilman Thomas & Battle, PLLC 301 Grant Street Suite 3440 Pittsburgh, PA 15219 jmartines@spilmanlaw.com *Counsel for Walmart*	Constellation Energy 250 Massachusetts Avenue NW Suite 760 Washington, DC 20001 Linda.Kizuka@constellation.com Colleen Kartychak, Esq. Constellation Energy 1310 Point Street, 8th Floor Baltimore, MD 21231 Colleen.kartychak@constellation.com *Counsel for Constellation Energy Generation, LLC and Constellation New Energy, Inc.*
Aron J. Beatty, Esq. Duquesne Light Company 800 N. Third Street Harrisburg, PA 17402 abeatty@duqlight.com *Counsel for Duquesne Light Company*	Whitney E. Snyder, Esq. Erich W. Struble, Esq. HMS Legal LLP 501 Corporate Circle Suite 302 Harrisburg, PA 17110 wesnyder@hmslegal.com ewstruble@hmslegal.com *Counsel for The Pennsylvania State University*
Nicholas Stobbe, Esq. * Stevens & Lee, P.C. 17 N. 2nd St., 16th Fl. Harrisburg, PA 17101 Nicholas.Stobbe@stevenslee.com *Counsel for Customer Generator Coalition*	Deanne M. O'Dell, Esq. * Eckert Seamans Cherin & Mellott LLC 213 Market St. 8th Floor Harrisburg, PA 17101 dodell@eckertseamans.com Lauren Burge, Esq. * Eckert Seamans Cherin & Mellott LLC 600 Grant Street, 44th Floor Pittsburgh, PA 15219 lburge@eckertseamans.com *Counsel for RESA*

Dated: July 22, 2026

Michael A. Gruin

***- Indicates Executed Protective Order Acknowledgement**

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY FOR APPROVAL OF ITS DEFAULT SERVICE PROGRAM FOR THE PERIOD FROM JUNE 1, 2027 THROUGH MAY 31, 2031	: : : :	**DOCKET NO. P-2026-3060298**

JOINT REPLY BRIEF OF

TOWN SQUARE ENERGY EAST, LLC AND

WGL ENERGY SERVICES, INC.

IN OPPOSITION TO JOINT PETITION FOR NON-UNANIMOUS SETTLEMENT

PUBLIC VERSION

STEVENS & LEE, P.C.

Michael A. Gruin, Esq.
PA ID No. 78625
17 North Second Street, 16th Floor
Harrisburg, PA 17101
717-255-7365 - Telephone
610-988-0852 - Fax
Michael.gruin@stevenslee.com
Attorneys for Town Square Energy East, LLC and WGL Energy Services, Inc.

DATED: July 22, 2026

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

A. Procedural History 1

B. Non-Unanimous Settlement 1

C. Legal Standards 1

D. Summary of Argument 2

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS 2

III. CLASSIFICATION OF NON-RESIDENTIAL DEFAULT SERVICE CUSTOMERS 2

IV. RATE DESIGN AND COST RECOVERY 2

V. CUSTOMER REFERRAL PROGRAM 2

VI. SUPPLIER COORDINATION TARIFF CHANGES AND RETAIL SHOPPING ISSUES 4

A. Return of Customers to Default Service at Contract Expiration 4

B. Quarterly Affirmation for Variable Rate Contracts 7

C. Changes to Purchase of Receivables (POR) Program 8

VII. CONCLUSION 16

7/22/2026 SL1 4511998v1 107998.00018

TABLE OF AUTHORITIES

Page(s)

Cases

Petition of Duquesne Light Company For Waiver and Suspension of Meter Testing Requirements Under 52 Pa. Code 57.20(e) and 57.21(f) For Deployed Legacy Meters, Dkt. No. P-2016-2525790 (Order entered December 22, 2016) 5

Duquesne Light Petition for Waiver of the Three-Day Switching Requirements under 52 Pa. Code § 57.174, Docket No. P-2014-2448863 (Order entered December 4, 2014) 6, 7

Petition of Interstate Gas Supply, Inc., to Amend Natural Gas Supplier License and for Waiver of Commission Regulations, Dkt. No. P-2021-3026755 (Order entered September 15, 2021).................................. 5

Petition of Met-Ed for Waiver of 52 Pa. Code § 56.97, Dkt. No. P-2013-2384967 (Order entered November 14, 2013)……………………………………………………..…5

PGW 2014-2016 USECP, Dkt, No. M-2013-2366301 (Order entered August 22, 2014)……………………………………………………………………………..….5

PPL Electric Utilities Corporation Retail Markets, Dkt. No. M-2009-2104271 (Order entered August 6, 2009)………………………………………………………...15

Regulations

1 Pa. Code § 35.18 6

52 Pa. Code § 5.43(a) 6

52 Pa. Code § 54.5.. 7, 16

52 Pa. Code § 54.10.. 6, 7

52 Pa. Code § 54.10 (3) 4, 5, 16

52 Pa. Code § 57.174... 6

7/22/2026 SL1 4511998v1 107998.00018

I. INTRODUCTION

Town Square Energy East, LLC (“Town Square”) and WGL Energy Services, Inc. (“WGL”), hereby submit this Joint Reply Brief to respond to the Main Briefs filed by FirstEnergy Pennsylvania Electric Company’s (“FirstEnergy, “FE PA”, or the “Company”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), and the Office of Consumer Advocate (“OCA”) in support of the Joint Petition for Non-Unanimous Settlement filed in this proceeding (“Non-Unanimous Settlement”).

A. Procedural History

Town Square and WGL restate the Procedural History from their Main Brief and incorporate it herein as if fully set forth.

B. Non-Unanimous Settlement

Town Square and WGL restate the Non-Unanimous Settlement section from their Main Brief and incorporate it herein as if fully set forth.

C. Legal Standards

Town Square and WGL restate the Legal Standards section from their Main Brief and incorporate it herein as if fully set forth

D. Summary of Argument

The FE PA, CAUSE-PA and OCA Main Briefs do not provide sufficient legal or factual justification for FE PA’s proposal to abandon the Customer Referral Program (“CRP”), its proposal to return customers to default service at the expiration of their EGS contract, its requirement for quarterly affirmative consent for ongoing service on month to month variable rates, or its proposed modifications to its POR program (collectively, the

7/22/2026 SL1 4511998v1 107998.00018

"Retail Shopping Issues"). As discussed in more detail below FE PA, CAUSE-PA and OCA rely largely on incomplete and partial data for their support for the Non-Unanimous Settlement. However, when the full data sets are reviewed in the proper context, the factual justifications for the Non-Unanimous Settlement do not withstand scrutiny or come close to providing sufficient grounds to demonstrate that the settlement is lawful, supported by the record, or in the public interest. FE PA, OCA and CAUSE-PA also fail to provide any legal justification that would permit modifications to multiple longstanding customer enrollment and renewal regulations without undertaking a formal rulemaking process.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

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

III. CLASSIFICATION OF NON-RESIDENTIAL DEFAULT SERVICE CUSTOMERS

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

IV. RATE DESIGN AND COST RECOVERY

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

V. CUSTOMER REFERRAL PROGRAM

FE PA, OCA and CAUSE-PA have provided no proof that the Customer Referral Program has harmed customers, and it is undisputed that the CRP has provided substantial tangible benefits to customers. The FE PA, OCA and CAUSE-PA main briefs insinuate that the CRP has harmed customers, but a closer look reveals no such evidence in the record.

FE PA's Main Brief states on page 40 that "both OCA witness Alexander and CAUSE-PA witness Cicero testified that there are a significant number of CRP customers that end up with contract prices in excess of the applicable PTC and the CRP produces significant adverse outcomes for FE PA customers." For this proposition, the FE PA Main Brief cites to three passages from OCA and CAUSE-PA's testimony: OCA St. 2, pp. 7-8; CAUSE-PA St. 1, pp. 28-29; CAUSE-PA St. 1-R, pp. 28-29. However, the two cited passages from the CAUSE-PA testimony did not make any mention whatsoever about "contract prices in excess of the applicable PTC" or "significant adverse outcomes for FE PA customers", and FE-PA's cite to those record references do not support FE PA's assertions. CAUSE-PA's testimony did not allege specific customer harm, but instead opposed the CRP because of "waning supplier participation and customer interest in this program" and the view that "it has simply run its course".[1] As such, this cite to CAUSE-PA's testimony in the FE PA Main Brief does not support the proposition that it is alleged to support, i.e. "significant adverse outcomes for FE-PA customers."

The OCA testimony cited by FE-PA does include allegations about contract prices exceeding the PTC, but an examination of that testimony reveals that OCA's assertion of harm is not supported by its own exhibits. OCA witness Alexander examined 24 months of prices paid by CRP participants after their CRP contract expired, and included a summary of that examination as Exhibit BA-3 to OCA Statement No. 1. However, that Exhibit shows that in the 24 months examined by OCA, CRP participants received prices from suppliers that were **below** the PTC **far more often than above** the PTC after their CRP participation ended. In Penn Power territory, CRP customers' rates were below the PTC in 23 of the 24 months examined. In Penelec territory, CRP customers' rates were below the PTC in 22 of the 24 months examined, and in Met-Ed and West Penn territories, CRP customers' rates were below the PTC in 20 of the 24 months examined.[2] Receiving prices that are below the PTC in 20 (or more) out of 24 months cannot credibly be

[1] CAUSE-PA St. 1-R, p. 29

[2] Exhibit BA-3 to OCA Statement No. 1., at page 3 of 8

considered “harmful”. This passage from OCA’s testimony is the only evidence in the record of alleged customer “harm” associated with the CRP, but a review of the actual evidence completely refutes the OCA’s witness’s conclusion of harm.

By contrast, there is clear evidence in the record confirming that customers who participated in the CRP paid $750,000 less than they would have paid on default service in the years 2025 and 2026 alone.[3] The only justification that FirstEnergy and other retail market opponents provided for eliminating the CRP was that participation in the program was declining. No evidence was submitted by FirstEnergy or the other opponents regarding issues with customer complaints, satisfaction, or outcomes associated with the CRP. [4]

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

VI. SUPPLIER COORDINATION TARIFF CHANGES AND RETAIL SHOPPING ISSUES

A. Return of Customers to Default Service at Contract Expiration

The Main Briefs of FE PA, OCA and CAUSE-PA acknowledge that FE PA’s proposal to return customers to default service at contract expiration directly conflicts with the longstanding EGS contract expiration and renewal regulation codified at 52 Pa. Code § 54.10 (3).[5] They all mistakenly argue that this conflict can be resolved by simply

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

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

[5] See FE-PA Main Brief, at p. 47, OCA Main Brief at p. 36, CAUSE-PA Main Brief at p. 20

"waiving" the regulation. However, as explained in the WGL/Town Square Joint Main Brief, FE-PA's contract expiration proposal is not a request for a waiver at all, but rather a legally defective request to amend or repeal longstanding Commission regulations. Even if FE PA's request was justified by the evidence in the record (which it is not), a formal rulemaking process would be necessary to repeal or amend the Commission's contract expiration regulation.

As the Commission has repeatedly explained:

> "[w]aivers of Commission regulations are not liberally construed or lightly granted. Waivers are not granted implicitly or of unlimited duration. In reality, waivers **are narrowly crafted and generally temporary in nature**.[6]

A petition for waiver of a Commission regulation must set forth clearly and concisely the petitioner's interest, the relevant legal authority, the purpose of the petition, and the facts claimed to constitute the grounds requiring waiver of the regulation. 52 Pa. Code § 5.43(a); see also 1 Pa. Code § 35.18. The regulation for which FE PA seeks a "waiver" (52 Pa. Code § 54.10 (3)) is a regulation that governs the actions of EGSs, not EDCs. The FE PA and OCA Main Briefs do not endeavor to address the legal standards for requesting or granting a waiver of Commission regulations, and do not explain how an EDC is able to request a waiver of a regulation that does not govern its actions in the first place.

---

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

The CAUSE-PA Main Brief at least attempts to touch on the standards for requesting a waiver of regulations, but its argument actually serves to highlight the significant legal defect with the attempt to modify the Commission's EGS regulations through a "request for waiver" in this case. On page 21 of its Main Brief, CAUSE-PA cites to a case in which Duquesne Light Company requested a temporary waiver of the Commission's three-day customer switching regulation that went into effect on December 15, 2014.[7] CAUSE-PA cites to this case in support of its position, but a review of that case actually undermines CAUSE-PA's argument and demonstrates why the waiver request in the present case is so defective.

The waiver request in the *Duquesne Light* case could not be more different than the waiver request in this case. In the *Duquesne Light* case cited by CAUSE-PA, Duquesne requested a waiver of a regulation (52 Pa. Code § 57.174) that governed the actions of EDCs in effectuating customer changes of electricity suppliers. By contrast, in the present case FE PA is requesting waiver of a regulation that does not govern its own actions in any way, but rather governs the actions of EGSs. To the extent an <u>EGS</u> would be seek relief from the contract expiration requirements, the EGS would be able to submit a request for a waiver of the regulation and present the legal and factual justification for why the regulation's requirements should be temporarily waived as to that specific EGS. But this is far different from an <u>EDC</u> seeking an industry wide change to a regulation that does not govern EDC activities at all, which is what FE PA is doing in the present case.

Furthermore, in the *Duquesne Light* case Duquesne requested a one-month <u>temporary</u> waiver of the regulation in question, and provided extensive legal and factual justification for the limited temporary waiver. By contrast, in the present case, FE PA is requesting a permanent alteration of the EGS contract renewal regulation, with no

[7] *Duquesne Light Petition for Waiver of the Three-Day Switching Requirements under 52 Pa. Code* § *57.174*, Docket No. P-2014-2448863 (Order entered December 4, 2014) ("*Duquesne Light*")

discussion of the relevant legal authority or factual justification for a permanent modification of the formally promulgated regulation.

The *Duquesne Light* case was the only case cited by FE PA, OCA and CAUSE-PA in support of FE-PA's request for a waiver of the Commission's EGS contract expiration regulation. The stark difference between the circumstances of the *Duquesne Light* case and the circumstances of the present case demonstrates that FE PA's "waiver" request is completely defective and cannot be granted as a matter of law. As explained at length in the WGL/ Town Square Joint Main Brief at pp. 14-22, even if FE PA, OCA and CAUSE-PA had justified their position that the Commission's contract expiration and renewal regulations should be changed, such a change to the regulations cannot be legally accomplished through a barebones "request for waiver". Such a change can only be made through a formal rulemaking process.

The Main Briefs of FE PA, OCA and CAUSE-PA also fail to explain why it is lawful or appropriate for a completely different set of contract expiration and renewal rules to apply in FE PA territory than in other EDC territories, and fail to dispel concerns about having different rules apply to EGSs and customers in different territories throughout the Commonwealth. As noted by Town Square witness Miller, allowing a single EDC to effectively create a different renewal regime within one utility territory would undermine statewide uniformity, create customer confusion, impose unnecessary operational complexity on suppliers, and invite additional utility-by-utility deviations that would fragment Pennsylvania's retail market rules with little to no justification.[8]

B. Quarterly Affirmation for Variable Rate Contracts

The Main Briefs of FE PA, OCA and CAUSE-PA completely fail to address how the FE-PA "Quarterly Affirmation" proposal can be lawfully enacted in light of the Commission's current customer enrollment regulation at 52 Pa. Code §54.5 and customer renewal regulation at 52 Pa. Code §54.10. The Commission's existing regulations contain

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

no requirement for EGSs to continually solicit confirmation and obtain consent from customers in order to continue their EGS supply service, so the Non-Unanimous Settlement's proposed change is unprecedented and completely inconsistent with the Commission's existing requirements. The Commission's EGS contract expiration regulation at 52 Pa. Code § 54.10 also contains no requirement for EGSs to continually obtain customer consent for continued service. That regulation only requires notice prior to contract expiration, and unequivocally permits automatic renewal and continuous service of EGS customers without the need for any repeated affirmation of consent by the customers.

The Non-Unanimous Settlement would impose a new regulatory requirement on EGSs' relations with their customers and new EGS customer contract rules that are directly contrary to the Commission's existing regulations at both 52 Pa. Code §54.5 and §54.10. The FE PA, OCA and CAUSE-PA Main Briefs completely omit any discussion of how the Quarterly Affirmation proposal can be lawfully enacted without changing these regulations through the formal rulemaking processes. For these reasons and the other reasons set forth in the WGL/ Town Square Joint Main Brief at pp. 22-25, that Quarterly Affirmation requirement must be rejected as a matter of law.

C. Changes to Purchase of Receivables (POR) Program

1. FE PA's examination of Town Square's pricing history is incomplete, misleading, and incorrect

FE PA's Main Brief includes an introduction to the Retail Shopping Issues section that attempts to criticize EGS offerings by examining Town Square's pricing history in 2024 and 2025. The FE PA arguments in that (unnumbered) section of its brief completely crumble under closer examination.

FE PA's Main Brief asserted that:

BEGIN CONFIDENTIAL

END CONFIDENTIAL

FirstEnergy's analysis and conclusions are simply wrong and based on an intentionally skewed misreading of Town Square's 2024-2025 pricing history. Town Square's full pricing history and full customer counts under its various product offerings were included in FE PA Statement No. 1-R as Confidential Exhibit DMY-14, and this data clearly and unequivocally shows that Town Square's offerings provided stability compared to PTC changes, as well as short term and long-term cost savings to customers.

FE PA Exhibit DMY-14 consists of a series of Town Square responses to discovery requests from FE PA, CAUSE-PA, and OCA, regarding its product offerings and pricing during 2024 and 2025. With respect to variable rates, it is unclear what point FE PA is trying to make regarding variable rate pricing, in light of the fact that so few of Town Square's customers were on variable rates during the periods in question. **BEGIN CONFIDENTIAL**

[9] FE-PA Main Brief, at p. 43

[10] See Highly Confidential Exhibit DMY-14, at 2nd page (Attachment A to Town Square Response to CAUSE-PA I-2)

[11] See Highly Confidential Exhibit DMY-14, at 3rd page (Attachment A to Town Square response to FE-PA I-1)

[12] See Highly Confidential FE-PA Exhibit DMY-16

[13] See Corrected OCA Statement 2-R, at p. 26

[14] See Highly Confidential FE-PA Exhibit DMY-14 (last four pages)
[15] Id.

END CONFIDENTIAL

To the extent that FE-PA's "analysis" of Town Square's pricing was attempting to suggest that Town Square and other EGS offerings don't provide value to customers, it failed miserably. The Town Square pricing information is the only individual EGS pricing information in the record, and it shows that its offerings have unequivocally provided customers with protection against rising PTCs under a variety of different price structures that would be eliminated if FE PA's proposals are approved.

2. FE PA, OCA and CAUSE-PA Ignore the Negative Consequences of FE PA's POR Proposal

The main briefs filed by FE PA, OCA and CAUSE-PA completely fail to refute the proof submitted by Town Square and RESA that FE PA's POR proposal will have negative customer consequences in the form of fewer options to control their electricity expenses. FE PA, OCA, and CAUSE-PA breezily argue that suppliers can easily continue to operate without POR.[16] This speculation is contradicted by actual experience. Witnesses for both RESA and Town Square explained why FirstEnergy's POR proposal would likely would result in the complete extinguishment of the residential electricity supply market in Pennsylvania, which would leave customers with no choice other than default supply at a time when default supply prices continue to rise.[17] RESA witness Lacey explained that in 2024, Maryland enacted legislation that removed POR from the residential market, eliminated automatic contract renewals, and placed price restrictions on product offerings. The result of the legislation was an end to the residential market in Maryland as all of the

---

[16] FE-PA Main Brief, at pp. 52, OCA Main Brief, at p. 43, CAUSE-PA Main Brief at p. 26

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

suppliers ceased making offers, and an outcry from customers who suddenly realized they have no choice but to take the utility default service rate.[18] The experience in FE-PA territory is similar. According to FirstEnergy's data responses, there are currently 70 EGSs serving residential customers in the Met-Ed rate district, 71 serving residential customers in the Penelec rate district, 54 serving residential customers in the Penn Power rate district, and 67 serving residential customers in the West Penn Power rate district, and not a single one has chosen to serve residential customers without POR. [19]

Once it is accepted that most suppliers will not make offers without POR, the negative customer consequences of FE PA's proposal become apparent. The fact is that implementing FE PA's POR proposal will remove numerous options for customers to save money. This is illustrated by the number of long-term fixed-price money-saving offers that would disappear under FE PA's proposal.

The table below lists sixteen actual EGS fixed- rate offers of 12 months or longer, that were posted on PaPowerSwitch in Met-Ed territory with rates higher than the Met-Ed PTC as of April 8, 2026. Because the prices were higher than the PTC, they would not be eligible for POR under FE PA's proposal, and therefore likely would not have been offered by the EGSs in question, for the reasons explained by RESA and Town Square. However, under the currently existing POR framework, the EGS made these price offers available, and each of these offers subsequently ended up being <u>lower</u> than the Met-Ed PTC when it changed on June 1, 2026.

EGS	**Term (Months)**	**Price/ kWh**	**ETF**	**Monthly Fee**	**Met-Ed PTC as of April 8, 2026 (*TSE Ex. RM-3*)**	**Met-Ed PTC as of June 1, 2026 (*TSE Ex. RM-4*)**
APG&E	12	0.1338	0	0	0.12965	0.13951
Major Energy	12	0.1339	0	0	0.12965	0.13951
AEP Energy	12	0.13490	0	0	0.12965	0.13951

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

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

APG&E	18	0.1358	0	0	0.12965	0.13951
Better Buy	18	0.1359	0	0	0.12965	0.13951
Energy Harbor	18	0.1359	0	0	0.12965	0.13951
Dynegy	18	0.1369	0	0	0.12965	0.13951
Verde	12	0.1375	$100	0	0.12965	0.13951
0 Commit	20	0.1378	0	0	0.12965	0.13951
0 Commit	18	0.1378	0	0	0.12965	0.13951
Achieve	20	0.1379	0	0	0.12965	0.13951
Better Buy	12	0.1379	0	0	0.12965	0.13951
Brighten	18	0.1379	0	0	0.12965	0.13951
Energy Harbor	12	0.1379	0	0	0.12965	0.13951
Dynegy	12	0.1389	0	0	0.12965	0.13951
Energy Harbor	20	0.1389	0	0	0.12965	0.13951

This information in the table above was drawn directly from PAPowerSwitch and FE PA's PTC tariff filing, and it is in the record in Town Square Exhibits RM-3 and RM-4. This is a concrete illustration of why simple point-in-time comparisons between EGS pricings and the PTC do not provide the full story when it comes to the benefits of shopping. The table above shows how customers can currently take advantage of long-term fixed price EGS offers to pay less than the PTC over time. And this illustration shows how those offers would disappear if FE PA's POR proposal is approved. This is the simplest of examples and does not even account for the other benefits that retail electricity shopping provides to customers, as described by RESA and Town Square's witnesses.[20] The Non-Unanimous Settlement fails to address this negative consequence of FE PA's POR proposal and does not explain how removing cost saving offers from the marketplace is justifiable or in the public interest.

[20] See Town Square Statement No. 1 at p. 12 and RESA Statement No. 1 at p. 18.

7/22/2026 SL1 4511998v1 107998.00018

3. The Lack of POR in Maine Does Not Justify FE-PA's Proposed Changes to its POR Program.

Under the category of "grasping at straws", FE-PA argues that because suppliers in the state of Maine provide electricity supply service without POR, that justifies FirstEnergy's market-killing POR proposal.[21] This argument is undeveloped, unsubstantiated, and clearly does not provide a justification for FE-PA's proposal. FE-PA's factual support on this point consists of a one-line reference to the fact that one electricity supplier that operates in FE PA territory also operates in Maine without POR. There is no analysis of Maine's market rules or structure, no examination of how many customers are served by retail suppliers in Maine, and no discussion of how Maine's experience without POR is different than Pennsylvania's experience with POR. In short, the record includes absolutely no information that would allow for a conclusion that Maine's lack of POR justifies limiting POR as FE PA is proposing.

While Maine's Public Utilities Commission may not have felt that POR was important for the type of market it desired to implement in that state, the Pennsylvania Commission has long ago determined that "a viable POR program is an essential element to the creation of a competitive market for generation in Pennsylvania,"[22] and that "a POR program is an essential tool to reduce barriers to entry by EGS firms and to create the fully functional retail market for generation envisioned by the General Assembly in Chapter 28",[23] and that "a properly functioning POR program can reduce costs for shopping customers and, therefore, be an incentive for the Company to minimize its own cost of

---

[21] FE-PA Main Brief at p. 52

[22] *PPL Electric Utilities Corporation Retail Markets*, Dkt. No. M-2009-2104271 (Order entered August 6, 2009), at p. 27

[23] Id., at p. 28

electricity for DSP customers."[24] And many other states rely on POR as a key element of retail electric choice markets throughout the country.[25] In short, the Commission should give no weight to the fact Maine does not utilize POR, as it is completely irrelevant to the determination of the legality and merits of FE PA's POR proposal.

VII. CONCLUSION

The Main Briefs of FE-PA, OCA and CAUSE-PA fail to explain how the Settlement's Contract Expiration and Quarterly Affirmation proposals are not precluded as a matter of law. Both proposals seek modifications to formally promulgated Commission regulations governing EGS contracting rights and requirements statewide (54 Pa. Code. §§ 54.5 and 54.10(3)). The FE PA, OCA and CAUSE-PA briefs largely overlook the legal requirements for obtaining a waiver of a regulation. They also ignore the fundamental principle that regulations cannot lawfully be altered through a mere "waiver" requested by a party whose actions are not originally governed by the regulations in question. Instead, any amendments to such regulations must be carried out in accordance with formal rulemaking procedures. For these reasons, the Non-Unanimous Settlement's Contract Expiration and Quarterly Affirmation must be rejected as a matter of law.

With respect to the proposed POR changes, the FE PA, OCA and CAUSE-PA Main Briefs completely fail to refute the proof submitted by Town Square and RESA that FE PA's POR proposal will have negative customer consequences in the form of fewer options to control their electricity expenses. FE PA's attempt to mischaracterize Town

---

[24] Id. at pp. 29-30

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

Square's pricing history completely fails, and a review of the full pricing history in FE PA's own exhibit provides a perfect illustration of how EGS offers under the existing POR framework have provided concrete savings to customers. The record also shows that these very same products would not be offered under FE PA's new POR proposal, which will eliminate a proven option for customers to manage their electricity supply pricing and realize savings versus the PTC.

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

Respectfully submitted,

STEVENS & LEE, P.C.

Michael A. Gruin

____

Michael A. Gruin, Esq.
PA ID No. 78625
17 North Second Street, 16th Floor
Harrisburg, PA 17101
717-255-7365 - Telephone
610-988-0852 - Fax
Michael.gruin@stevenslee.com
Attorneys for Town Square Energy East, LLC and WGL Energy Services, Inc.

July 22, 2026