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July 22, 2026

VIA eFILING

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
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 in the above-captioned proceeding is the **Reply Brief of FirstEnergy Pennsylvania Electric Company ("Reply Brief").**

The public version of the Reply Brief will be served on the presiding Administrative Law Judges ("ALJs") and all parties of record as indicated on the Certificate of Service. The HIGHLY CONFIDENTIAL version of the Reply Brief will be served only on the ALJs and counsel for parties that have executed a Non-Disclosure Certificate in accordance with Paragraph 5 of the Protective Order entered in this proceeding.

If you have any questions, please do not hesitate to contact me. Thank you.

Very truly yours,

Kenneth M. Kulak

Per Certificate of Service (w/encls.)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have on this day served copies of the **Reply Brief of FirstEnergy Pennsylvania Electric Company** on the persons listed below, in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

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Dated: July 22, 2026

***=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**

REPLY BRIEF OF FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY

Before Administrative Law Judges
Mark A. Hoyer and Erin L. Gannon

PUBLIC VERSION

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Court Cases

Commission Cases

Statutes and Regulations

Other Authorities

I. INTRODUCTION

FirstEnergy Pennsylvania Electric Company ("FE PA" or "the Company") files this Reply Brief in support of the Joint Petition for Non-Unanimous Settlement (the "Joint Petition" or "Settlement"), which resolves all issues in this proceeding and is supported by the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Walmart, Inc. ("Walmart"), and Duquesne Light Company ("DLC") (collectively, the "Settling Parties").

In this Reply Brief, the Company responds to the Initial Briefs of parties opposing the Settlement, which fall into two groups. The first group consists of electric generation suppliers ("EGSs") and includes the Retail Energy Supply Association ("RESA"), Shipley Energy and IGS Energy (the "EGS Parties"), Town Square Energy East, LLC ("Town Square") and WGL Energy Services, Inc. ("WGL"), and Constellation Energy Generation, LLC and Constellation New Energy, Inc. ("Constellation"). The second group is comprised of several parties with interests in solar energy and/or operating or developing solar energy facilities in FE PA's service territory: Dimension PA 1, LLC ("Dimension"), the Solar Energy Industries Association and the Coalition for Community Solar Access (the "Joint Solar Advocates," or "JSA") and a group of solar projects that have organized themselves as the Customer-Generator Coalition ("CGC").

To a very large extent, the issues raised in the opposing parties' Initial Briefs were fully addressed in FE PA's Initial Brief, filed on July 10, 2026, and an extensive reanalysis of each subject is, therefore, unnecessary. However, as an aid to the Administrative Law Judges, this Reply Brief revisits several key areas of disagreement to address those parties' arguments regarding the responsibility of certain costs associated with default service supply (including Network Integration Transmission Service, or "NITS"), the classification of customer-generators by maximum registered peak load ("MRPL"), and the Settlement's proposed revisions to FE PA's Electric Generation Supplier Coordination Tariff ("Supplier Tariff") and related retail shopping issues.

A. Non-Unanimous Settlement

In this section of the Initial Briefs, several parties opposing the Settlement chose to either summarize their arguments against the provisions of the Settlement or present criticisms of the Settlement as a whole, suggesting that it does not meet the Commission's policy considerations favoring settlements.[1] The various errors in the opposing parties' criticisms of the Settlement's provisions are addressed in the remaining sections of this Reply Brief, but the flaws in the broad general contentions of several non-settling parties are notable.

First, the fact that the non-unanimous Settlement does not include some parties with respect to some contested issues does not undermine the benefits associated with Settlement or its furtherance of the public interest. The Commission has long made clear that non-unanimous settlements are beneficial. For example, in the most recent default service proceeding of UGI Utilities, Inc. – Electric Division ("UGI"), the Commission explained:

> This Commission has stated that results achieved through settlement are often preferable to those achieved at the conclusion of a fully litigated proceeding. A full settlement of all these issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a Non-Unanimous Settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole, non-unanimous, or partial, benefits not only the named parties directly, but indirectly, all customers of the public utility involved in the case.[2]

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[1] 52 Pa. Code § 5.231(a); *see also* 52 Pa. Code §§ 69.401 *et seq.* (settlement considerations in rate cases).

[2] *See, e.g., Petition of UGI Utils, Inc. – Elec. Div. for Approval of a Default Serv. Plan for the Period of June 1, 2025 through May 31, 2029*, Docket No. P-2024-3049343 (Opinion and Order entered Feb. 20, 2025) ("*UGI Electric*"), pp. 52-56, *aff'd sub nom.*, *Penn Renewables, LLC v. Pa. P.U.C.*, ___A.3d___, 2026 WL 1466224 (Pa. Commw. Ct. 2026) ("*Penn Renewables*").

The Settlement includes a number of compromises by FE PA of its originally proposed seventh default service program for the period June 1, 2027 to May 31, 2031 ("DSP VII").[3] The Settling Parties – who did not cross-examine each other's witnesses at hearings and who are not briefing issues between the Settling Parties resolved by the Settlement – specifically agreed in the Settlement that substantial litigation costs and associated costs were avoided.[4] Settlements do not require wholesale reworking of an applicant's proposal on every issue to be in the public interest, and those parties opposing the settlement on this basis cite no authority to the contrary.[5]

Similarly, non-unanimous settlements do not require some percentage of the parties or aligned parties to a proceeding to join the Settlement to be in the public interest, as CGC and the EGS Parties assert.[6] Indeed, the fact that the OCA and the OSBA – the statutory parties in this proceeding charged with protecting the interest of both residential and small commercial customers – fully support the Settlement is strong evidence that the Settlement's terms and conditions are just, reasonable, and consistent with the public interest.[7] Parties joining a non-unanimous settlement also are not required to take positions

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3 *See* Joint Petition, Statement A, pp. 2-6 (discussing original FE PA proposals and revisions reflected in the Joint Petition).

4 Joint Petition, ¶ 75.

5 Constellation also argues that the Settlement must be considered as a whole and not solely as individual provisions. Constellation Initial Br., p. 6. While the Settling Parties have agreed on a comprehensive settlement to resolve all issues in the proceeding, the Settlement contains provisions under which the Settling Parties can decide whether or not to maintain the Settlement should the Commission make any modifications to the Settlement. *See* Joint Petition, ¶¶ 78-79.

6 CGC Initial Br., p. 7; EGS Parties Initial Br., p. 5.

7 *See, e.g., Pa. P.U.C. v. Aqua Pa., Inc.*, Docket Nos. R-2018-300355 et al. (Opinion and Order entered May 9, 2019), p. 55 (explaining that "[w]hen each of the statutory

and present record evidence on all issues in a contested proceeding. This basic principle was reflected recently with the Commission's approval of a non-unanimous settlement in *PPL Electric*,[8] where JSA supported only the portions of the Settlement of an entire rate case related to classification of non-residential default service customers based on a customer-generator's MRPL.[9]

In short, the Settlement is no different than many other non-unanimous settlements; it represents a comprehensive resolution of the issues before the Commission and should be approved for reasons set forth in FE PA's Initial Brief and in this Reply Brief.

B. Legal Standards

The parties largely agree regarding the burden of proof with respect to FE PA and the Settling Parties as proponents of the Settlement as well as requirements that the Commission determine whether the proposed terms and conditions of the Settlement are in the public interest. Given the proposals of certain parties for alternatives to the Settlement – such as the introduction of a negative peak load contribution ("PLC"), as JSA proposes

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advocates fully support a settlement, it is a good indicator that the terms and conditions of the settlement are just and reasonable," and "[i]t is of great significance that the statutory advocates fully support the Joint Settlement rates") (*citing Pa. P.U.C. v. T.W. Phillips Gas and Oil Co.*, Docket No. R-2010-2167797 (Order entered November 4, 2010)).

8 *Pa. P.U.C. v. PPL Elec. Utils. Corp.*, Docket R-2025-3057164 (Opinion and Order entered June 11, 2026) ("*PPL Electric*"). The concern JSA and Dimension raise with respect to the Settlement's revision of FE PA's original MRPL proposal is addressed in Section III.D. *infra*.

9 *PPL Electric*, p. 146.

– it is important to underscore that the Public Utility Code and Commission precedent make clear that the proponent of such an alternative bears the burden of proof.[10]

As both CAUSE-PA and RESA address the general framework of the Electricity Generation Customer Choice and Competition Act (the "Choice Act") and the appropriate legal standards and principles that apply to proposals relating to retail competition, the clear guidance of the Commonwealth Court on retail competition deserves emphasis. The Commonwealth Court has explained that "[t]here can be no question that the overarching goal of the Choice Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers. But this scheme does not demand absolute and unbridled competition."[11] Under the Choice Act, "the General Assembly has reserved within the PUC the authority to 'bend' competition to further other important aspects of the Code, including the Choice Act, where [the PUC] provides substantial reasons why the restriction on competition is necessary (i.e., there are no reasonable alternatives)."[12] A "restriction on competition is necessary when, one, there is a harm associated with competition and, two, there is no reasonable alternative to the rule that restricts competition."[13]

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[10] 66 Pa. C.S. § 332; *see, e.g.*, *Petition of PECO Energy Co. for Approval of its Default Serv. Program for the Period from June 1, 2025 through May 31, 2029*, Docket No. P-2024-3046008 (Opinion and Order entered Nov. 7, 2024) (explaining that "a party that offers a proposal in addition to what is sought by the original filing bears the burden of proof for such a proposal").

[11] *Coalition for Affordable Utility Serv. & Energy Efficiency in Pa. v. Pa. P.U.C.*, 120 A.3d 1087, 1101 (Pa. Commw. Ct. 2015) (*en banc*), *allocatur denied*, 136 A.3d 982 (Pa. 2016) ("*CAUSE-PA*").

[12] *Id*. at 1106.

[13] *Retail Energy Supply Association v. Pa. P.U.C.*, 185 A.3d 1206, 1228 (Pa. Commw. 2018) ("*RESA*").

C. Summary of Argument

As set forth in FE PA's Initial Brief, the Commission should approve FE PA's DSP VII, as modified by the Settlement, because DSP VII satisfies all requirements of the Choice Act and applicable Commission regulations and resolves the remaining contested issues in this proceeding pertaining to procurement and implementation plans, classification of large customer-generators, and tariff rules governing the interaction between electric distribution companies ("EDCs") and EGSs and related retail market issues. None of the arguments presented by the parties opposing the Settlement support a different result.

Procurement and Implementation Plans. RESA remains the only non-settling party that opposes the Company's proposed procurement and implementation plans for DSP VII. Contrary to RESA's claims, the record in this proceeding demonstrates that FE PA's residential class procurement product under the Settlement fully satisfies each of the requirements of the Choice Act and the applicable Commission regulations on default service, and will provide benefits to default service customers by protecting the Company and its customers from price and volumetric risk as well as providing price stability. RESA opposes the change in allocation of responsibility for NITS costs under FE PA's Supplier Master Agreement ("SMA") and continued use of a capacity proxy price ("CPP") during DSP VII and alleges that those procurement features unjustifiably transfer risk to customers and distort competition between default service competitive supply. FE PA's treatment of NITS as provided in the Settlement will not distort competition, as explained in FE PA's Initial Brief, and the removal of NITS from pricing under the SMA is consistent with default service procurement practices in Pennsylvania. And while RESA argues that a reduction in supplier risk premiums is not sufficient justification to continue using a CPP, the Commission has relied upon that basis for approving CPPs in several prior Pennsylvania default service programs. Furthermore, as described in FE PA's Initial Brief, continuing the Company's Commission-approved CPP mechanism is a reasonable approach to maintain diversity of supply products while also mitigating risk premiums associated with unknown PJM Interconnection, LLC ("PJM") capacity prices.

Net-Metered Excess Generation. CGC and Dimension oppose the Settlement's classification of non-residential default service customers based on MRPL and net power flow. JSA does not oppose the Settlement's MRPL classification but requests an extended 25-year/15-year grandfathering period for operational and transitional projects in development or a 10-year period consistent with the Commission's recent decision in *PPL Electric*, and Dimension joins in JSA's grandfathering request. In large part, the legal objections CGC raises have already been addressed by the Commission and the Commonwealth Court in earlier proceedings. Moreover, the record evidence establishes the potentially huge rate impacts of allowing customer-generators to continue to receive default service under the Company's Price-to-Compare ("PTC") Default Service Rate Rider ("PTC Rider"), while the alleged offsetting benefits that CGC and JSA assert customer-generators deliver are unquantified and uncertain. Those asserted benefits therefore provide no basis for continuation of large customer-generators on the PTC Rider. The Settling Parties agreed to a modification of the two-year grandfathering period that would extend capacity and line losses in FE PA's HP Rider for 15 years, similar to the time period in *PPL Electric*, to continue support for solar development in FE PA's service territory and the Settlement's MRPL provisions should be approved.

Supplier Tariff Changes and the CRP. In their Initial Briefs, RESA, the EGS Parties, Constellation, and Town Square/WGL all repeat the objections to changing the current rules for EGS arrangements with residential customers and limiting access to FE PA's purchase of receivables ("POR") program advanced in testimony by RESA witness Frank Lacey and Town Square witness Randal Miller. In addition, RESA and Town Square/WGL continue to press for a successor CRP during DSP VII and further collaboratives to discuss how to improve the program.

Unlike prior default service proceedings where the Commission has confronted above-PTC supplier pricing, the record in this case establishes that customers have not only paid large amounts above the PTC for generation supply – $82 million in 2025 alone, $395 million more from 2022 through 2026, and $888 million more since 2017 – but FE PA and its customers are experiencing higher service termination rates among shopping customers, excessive uncollectible expense, and rising customer complaints related to supplier pricing and practices. The existing two-notice framework under 52 Pa. Code § 54.10 and clawback charges assessed to a subset of EGS participating in the Company's POR program has not alleviated those documented harms to FE PA customers arising from hundreds of millions in overpayments since 2017. There is no reasonable alternative supported by record evidence to address the pervasive harm caused by the current Supplier Tariff protocols and rules. The arguments of various parties that requiring a customer to affirm their choice to remain with their EGS at the end of a fixed-duration contract or in the course of a month-to-month variable rate contract will somehow restrict customer choice are not supported by the evidence in this case. Moreover, changing FE PA's POR program as provided in the Settlement will incentivize EGSs to consider the impact of their pricing on a customer's ability to pay and affordability. The parties opposing these changes did not present substantial evidence supporting their claims that these reforms would limit "value-added" competitive product attributes, such as renewable energy or long-term price stability, and EGSs remain entirely free to offer and charge any price for their services.

RESA and Town Square/WGL recommend implementation of a successor CRP, arguing that the program produces customer savings and does not impose costs on FE PA and seek another forum to discuss how the CRP can be improved. The CRP is scheduled to terminate on May 31, 2027, in accordance with the settlement of the Company's last default service proceeding ("DSP VI") and the Commission should not reinstate the program consistent with the elimination of similar programs in other EDC service territories and the results of the collaborative held in October 2025.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Residential Class Default Service Products

RESA's Initial Brief confirms that it does not oppose the duration of the proposed 60-month fixed-price, full-requirements residential procurement product representing approximately 10% of residential default service load.[14] Nonetheless, RESA continues to recommend that any sixty-month contract be procured with no pass-through of NITS costs to customers.[15] As explained in FE PA's Initial Brief[16] and Section II.B. below, RESA's recommendation should be rejected.

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

As described in FE PA's Initial Brief,[17] the Settlement adopts the same form of SMA used in DSP VI with modifications that, among other changes not at issue, include removal of PJM charges for NITS from the pricing under the SMA and revisions to clarify the calculation of the CPP as discussed in Section II.C. below.[18]

RESA alone opposes the removal of NITS charges from the responsibility of default service suppliers under the Settlement. RESA's Initial Brief relies on the following three arguments for its opposition: (1) NITS risk is transferred to default service customers, not eliminated, (2) FE PA failed to justify fundamentally changing FE PA's longstanding procurement model for NITS, and (3) the proposal distorts competition between default service competitive supply.[19]

RESA's first argument misconstrues the purpose and intent of the Settlement's treatment of NITS costs under the Company's SMA. As RESA's Initial Brief acknowledges, FE PA has consistently explained that the purpose of removing NITS from wholesale default supplier responsibility is to reduce the supplier risk premiums embedded in supplier prices for full requirements products, which can reduce the overall cost to

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[14] RESA Initial Br., pp. 12-13.

[15] *Id.*

[16] FE PA Initial Br., pp. 13-15.

[17] *Id.*, pp. 15-17.

[18] Joint Petition, ¶¶ 28-29.

[19] RESA Initial Br., p. 16.

customers.[20] FE PA does not contend that the proposal will eliminate risk related to NITS costs; instead, the proposal ensures that default service customers pay actual NITS costs instead of a supplier's estimated NITS costs plus a supplier risk premium associated with those costs.[21] The Company believes that this is appropriate given the well-established facts that NITS are fundamentally different from other wholesale market risks that suppliers routinely manage, are unhedgeable, and have been volatile in recent years.[22] As OCA witness Serhan Ogur testified, customers are better served by paying actual NITS costs as incurred rather than estimated costs inflated by supplier premiums.[23] Notably, RESA agrees that removing NITS from the wholesale product may reduce the default service supplier risk premiums.[24] RESA's related argument based on FE PA witness Dr. Nicholas Powers' testimony that auction participation has remained consistently robust in an attempt to undermine FE PA's claim that NITS removal is needed to facilitate increased supplier participation in auctions misses the point: robust participation does not mean that customers are not paying unnecessary premiums.[25]

RESA's second argument relies on its contention that the Company's NITS proposal departs from the Commission's prior decisions in FE PA's second and third default service proceedings. RESA argues in those proceedings the Commission rejected substantially the same risk-allocation proposal.[26] Contrary to RESA's contention, in those cases, the Company proposed to assume responsibility for NITS costs on behalf of both default service suppliers and EGSs and recover the costs from all customers on a non-bypassable

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[20] *See* RESA Initial Br., pp. 16-19; FE PA Initial Br., pp. 15-17; FE PA St. 2, pp. 4-5; FE PA St. 4, pp. 5-6.

[21] FE PA Initial Br., p. 17.

[22] *See* FE PA Initial Br., pp. 16-17; OCA Initial Br., p. 9.

[23] OCA Initial Br., p. 9; OCA St. 1, p. 24; OCA St. 1-SR, p. 20.

[24] RESA Initial Br., p. 17.

[25] *See* OCA St. 1-R, pp. 9-11.

[26] RESA Initial Br., p. 16.

basis through the equivalent of FE PA's existing DSS Rider.[27] Notably, RESA did not oppose this proposal in *DSP II* and was the party who initially made the proposal in *DSP III*.[28] In resolving the issue at the time of *DSP II*, the Commission rejected FE PA's NITS based upon a finding of fact that NITS costs are predictable. In *DSP III*, the Company argued that circumstances had changed since the *DSP II* decision in that NITS costs can be volatile. The Commission ultimately rejected the Company's NITS proposal in that proceeding as well, finding that the single, alleged incident of volatile NITS costs in a neighboring jurisdiction that the Company provided as evidence did not amount to "changed circumstances" that would warrant the requested non-bypassable collection of NITS.[29] However, in *DSP III*, the Commission found that FE PA's NITS proposal would not violate the Choice Act, the Public Utility Code or Commission regulations, and the Commission would not be precluded from implementing the NITS proposal had it determined that circumstances had sufficiently changed.[30]

In this case, the record evidence shows that circumstances have indeed changed as transmission costs have been substantially more volatile than in 2014.[31] Moreover, the removal of NITS from default service supplier pricing is also consistent with recent

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[27] *See Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co. and West Penn Power Co. for Approval of Their Default Serv. Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 & P-2011-2273670 (Opinion and Order entered Aug. 16, 2012), at 73-76 ("*DSP II*"); *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of Their Default Serv. Programs*, Docket Nos. P-2013-2391368, P-2013-2391375, P-2013-2391376 & P-2013-2391377 (Opinion and Order entered Feb. 20, 2015), pp. 41-47 ("*DSP III*").

[28] *See DSP II*, pp. 16-18; *DSP III*, p. 23.

[29] *DSP III*, p. 31.

[30] *Id.*, p. 38.

[31] *See* FE PA Initial Br., pp. 16-17; OCA Initial Br., p. 9.

Commission approved treatment of these transmission-related costs by other EDCs and broader industry practice.[32]

Finally, RESA's argument that the Settlement's allocation of NITS costs in the SMA "creates another economic advantage for EDC-provided default service"[33] erroneously assumes that both types of suppliers face the same risks in managing their wholesale cost obligations and load. As explained in FE PA's Initial Brief, default service suppliers must serve customers under the terms of the SMA.[34] In contrast, EGSs may offer customers a variety of retail products and contract structures, including products with different pricing approaches and contract durations.[35]

In sum, FE PA's justification for the proposed change to NITS procurement appropriately balances least cost and rate stability for its customers and is supported by the record evidence in this case. It is also aligned with the Commission's approvals to remove NITS from wholesale default service supplier responsibility for PECO Energy Company ("PECO"), PPL Electric Utilities, Corp. ("PPL"), DLC, and Citizens' Electric Company.[36]

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[32] FE PA Initial Br., p. 17.

[33] RESA Initial Br., p. 23.

[34] FE PA Initial Br., p. 17.

[35] *Id.*

[36] *See* OCA Initial Br., pp. 9, 11-12 (citing *Petition of PPL Elec. Utils. Corp. for Approval of a Default Serv. Program and Procurement Plan for the Period June 1, 2025 through May 31, 2029*, Docket No. P-2024-3047290, Joint Petition for Settlement Attach. A at 14, Attach. B at 13; *Joint Petition of Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company for Approval of Default Service Plan and Waiver of Commission Regulations for the Period June 1, 2025 Through May 31, 2029*, Docket No. P-2024-3049357, et al., R.D. at 18 (Dec. 23, 2024); *Pennsylvania Universal Default Supplier Master Agreement, Duquesne Light Co.* at 102 (2025); *PECO Energy Co. Pennsylvania Default Serv. Supplier Master Agreement* at 104 (Dec. 15, 2025)).

The Commission should therefore approve the SMA as proposed by FE PA and adopted under the Settlement without modification.

C. Capacity Proxy Price

In its Initial Brief, RESA opposes FE PA's proposal to continue using a CPP mechanism for the same reasons it opposes removal of NITS charges discussed above and contends that FE PA has not shown how the CPP will benefit customers.[37] As explained in FE PA's Initial Brief, the CPP reduces the need for bidders to add risk premiums if a portion of an fixed-price full requirements ("FPFR") product extends into an unpriced capacity period, lowering the cost to default service customers.[38]

RESA then argues FE PA's reasoning that using a CPP mitigates supplier risk premiums is not sufficient justification to continue its use.[39] However, this is the exact justification the Commission used in its approval of CPPs in several prior Pennsylvania default service procurements.[40] For these reasons, in addition to those discussed above in

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[37] RESA Initial Br., pp. 25-26.

[38] FE PA Initial Br., pp. 17-18.

[39] RESA Initial Br., p. 26.

[40] *See Petition of Duquesne Light Co. for Approval to Modify its Supplier Master Agreement*, Docket No. P-2020-3023149 (Order entered Jan. 14, 2021), p. 4; *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co., and West Penn Power Co. for Approval to Modify their Supplier Master Agreement*, Docket Nos. P-2020-3021424, P-2020-3021425, P-2020-3021426, and P-2020-3021427 (Order entered Oct. 13, 2020), p. 9; *Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co., and West Penn Power Co. for Approval of their Default Service Plan for the Period from June 1, 2023 through May 31, 2027*, Docket Nos. P-2021-3030012 et al. (Recommended Decision issued June 29, 2022) ("FE-PA DSP VI Recommended Decision"), pp. 59-60. The FE-PA DSP VI Recommended Decision was adopted without modification by the Commission in its Order entered August 4, 2022, at Docket Nos. P-2021-3030012 et al.

Section II.B., the Commission should approve the CPP mechanism as proposed by FE PA and adopted under the Settlement without modification.

III. CLASSIFICATION OF NON-RESIDENTIAL DEFAULT SERVICE CUSTOMERS

As FE PA explained in its Initial Brief, the rate classification of large customer-generators has been thoroughly explored by the Commission in *UGI Electric*, *PPL Electric*, and *Citizens Electric*[41] with the Commission's decision in *UGI Electric* approving classification of customer-generators affirmed by the Commonwealth Court.[42] In each of these proceedings, the Commission approved rate classifications of large customer-generators that reflect both peak demand and peak generation of those customers, just as FE PA has proposed.

In this proceeding, three parties revisit the Commission's rulings to try for a different result. JSA wisely does not oppose the Settlement's proposed rate classification of customer-generators**.** Instead, JSA seeks approval of an extended grandfathering period of the current rate classification for 25 years for operating systems and 15 years for "transitional" systems in development and argues that recognition of various benefits purportedly created large customer-generators will help reduce the amounts that would otherwise be paid by small commercial customers. As an alternative not presented in JSA's testimony, JSA advocates for a 10-year grandfathering period based on the Commission's approval of the settlement in *PPL Electric* and possibly adopting a different arrangement for customer-generators in the Penn Power Rate District given the large costs associated with annual cashouts paid to operating customer-generators in that Rate District. JSA also criticizes the Settlement's provision preserving the capacity and line loss provisions of the HP Rider through May 31, 2041.

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[41] *Pa. P.U.C.. v. Citizens' Elec. Co. of Lewisburg, PA*, Docket Nos. R-2025-3054394, et al. (Opinion and Order entered Jan. 15, 2026) ("*Citizens Electric*").

[42] *See* FE PA Initial Br., p. 20.

CGC and Dimension both entirely oppose the Settlement's proposal to use MRPL based on net power flow to classify customer-generators between the commercial and industrial procurement groups served under FE PA's PTC Rider and Hourly Pricing Default Service ("HP Rider"). For its part, CGC argues that FE PA's MRPL classification is inconsistent with the Commission's regulations, the AEPS Act, and Act 129 and ignores a host of benefits that customer-generators supposedly provide to default service customers and Pennsylvania as a whole. Dimension (which did not offer any testimony in this proceeding) opposes changing the Company's default service classification but generally adopts JSA's grandfathering proposals and would also support a 10-year grandfathering period based on *PPL Electric*.

FE PA's Initial Brief described the various errors in the testimony and proposals of JSA witness Thomas S. Michelman and CGC witness James A. Heidell, and their key criticisms of the testimony of FE PA's witnesses and the Settlement's MRPL provisions not addressed in FE PA's Initial Brief are addressed below.[43] But given the focus of both JSA and Dimension on grandfathering of current rate classifications, a crucial difference between FE PA default service customers and PPL default service customers under the settlement in that proceeding is important to highlight. Unlike FE PA small commercial default service customers whose rates would rapidly increase under even conservative scenarios highlighted by FE PA witness Young, the Commission approved the 10-year grandfathering provision for PPL Electric with the understanding that the 140 MW cap on customer-generator projects would represent only about $0.02/kWh of upward pressure on the PTC while substantially mitigating impacts.[44] In contrast, as FE PA noted in its Initial Brief, calculations by JSA's own witness of JSA's grandfathering period even including JSA's alleged offsetting benefits (with which FE PA does not agree) results in an increase in the PTC for Penn Power customers of 22% as early as 2029. Given these consequences,

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[43] *See* FE PA Initial Br., pp. 18-35.

[44] *PPL Electric*, pp. 133-134.

the Commission should approve the Settlement in this proceeding consistent with its prior decisions.

A. Classification of Customers Based on Maximum Registered Peak Load

In its Initial Brief, CGC contends that FE PA "illegally seeks to equate demand with supply" by defining MRPL to include the net power flow from or into the Company's distribution or transmission system.[45] As CGC acknowledges, FE PA's definition is based upon the Commission's definition of MRPL:

> The highest level of demand for a particular customer, based on the PJM Interconnection, LLC 'Peak Load Contribution Standard, or its equivalent, and as may be further defined by the EDC tariff in a particular service territory.[46]

While CGC asserts that the Commission's regulations mandate that MRPL must be tied to a demand metric in light of the reference to PJM's Peak Load Contribution ("PLC"), the Commission rejected this argument in *PPL Electric* (which CGC fails to note) and concluded that PPL Electric may use tariff language to include the net power flow (i.e., the net impact) of a customer-generator so long as the resulting tariff classification is supported by the record and remains consistent with the Public Utility Code (the "Code"), Commission regulations, and the AEPS Act.[47] In reaching this conclusion, the Commission specifically noted that PPL's MRPL methodology (which is substantially the same as FE PA's MRPL proposal) was justified by the default service rate impacts of customer-generators and the resultant treatment of customer-generators was just,

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[45] CGC Initial Br., p. 15-16 (citing FE PA Exhibit DMY-6). As noted above, JSA does not contest FE PA's proposed MRPL definition. *See* JSA Initial Br., p. 12. Dimension notes FE PA's proposal but does not include any argument in this section of its Initial Brief. *See* Dimension Initial Br., p. 6.

[46] 52 Pa. Code § 54.182 (emphasis added).

[47] *PPL Electric*, p. 199.

reasonable and non-discriminatory.[48] The Commission should reach the same conclusion here.[49]

B. Projections of Customer-Generator Growth

Net metering generation projects are typically utility scale (greater than 1 MW but less than 3 MW) and FE PA currently has 1,555 projects in its queue totaling more than 3.3 gigawatts of nameplate capacity.[50] In the Penn Power Rate District alone, there are already 11 operational facilities with a total nameplate capacity of 30.72 MW.[51]

Both CGC and JSA contend that FE PA's projections of customer-generator growth are speculative and cannot be relied upon by the Commission. JSA and CGC rely on the testimony of CGC's witness, James Heidell, who asserted that the number of projects that have taken additional steps towards energization in 2025 are only a portion of the 786 applications FirstEnergy received in 2025, with 92 paying an interconnection fee and 42 projects having been cancelled.[52] And they also cite FE PA witness Young's testimony that he could not predict the exact amount of customer-generation penetration next year or 25 years from now.[53]

The fact that the exact number of the 1,555 net metering projects in FE PA's interconnection queue that will be energized is uncertain is not in dispute. As FE PA explained in its Initial Brief, Mr. Young's testimony provided a range of potential customer-generation energization ranging from just 1% to 50%, and demonstrated that the consequences of just 10% of customer-generator projects coming online by 2029 would lead to a net metering expense for default service small business customers of over $59

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[48] *Id.*, pp. 200-202.

[49] CGC presents additional arguments relating to the MRPL definition in Section III.D of its Initial Brief, which FE PA will also address in Section III.D *infra*.

[50] FE PA St. 1 (Corrected), p. 17 & CGC St. 1-SR, Exhibit JAH-1SR.

[51] FE PA St. 1-R, p. 24.

[52] CGC Initial Br., pp. 17-20; JSA Initial Br., pp. 15-17.

[53] *See id.*

million.[54] Tellingly, neither CGC nor JSA defend a likely energization rate for customer-generation projects and only argue that FE PA's projections are uncertain. But any suggestion that the number of customer-generation projects energized in the future will be immaterial when FE PA is receiving nearly 800 customer-generator applications in a year is clearly unfounded. Exact certainty is also not required; as the Commission found in *PPL Electric*, a range of sensitivity analyses was more than sufficient to establish the risks associated with customer-generator growth.[55]

C. Costs and Benefits of Customer-Generators

Both JSA and CGC argue that FE PA's MRPL proposal incorporated in the Settlement does not recognize alleged benefits of customer-generators and would undercut those same customer-generators who believed they would always be entitled to be classified as default service customers under FE PA's PTC Rider. As FE PA explained in its Initial Brief, the benefits of customer-generators that JSA and CGC extoll are either unquantified, uncertain, or based on accounting constructs, while the costs that will arise from increasing customer-generators receiving payments under the PTC Rider are quite real.

1. PTC Rider v. HP Rider

The PTC Rider and the HP Rider are both default service rates under FE PA's tariff and compensate customer-generators for the "full retail value" of energy generation through annual cash-outs based on the excess generation of those customer-generators.[56] Under both riders, customer-generators are compensated for energy, transmission and capacity, with energy compensated at PJM's locational marginal price ("LMP") for the

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[54] FE PA Initial Br., p. 23.

[55] *Cf. PPL Electric*, p. 172 (discussing cancellation rates between 36% and 75% in denying CGC's exception to the settlement in that proceeding).

[56] FE PA St. 1-R, p. 18.

applicable FE PA Rate District under the HP Rider instead of the cost of default service supply acquired by FE PA for the applicable FE PA Rate District.[57]

The amount that will be paid to customer-generators under the HP Rider rate may be lower than under the PTC Rider rate, but the record evidence showed that customer-generator compensation under the HP Rider rate may remain well above the rate that customer-generators might receive if they were only selling their energy in wholesale markets.[58] *Penn Renewables* further underscores that compensating customer-generators for energy using a retail rate based on LMP does not invalidate that rate or make it less than "full retail value."[59] Furthermore, as reflected in the Settlement, JSA and CGC's contention that solar development in FE PA's service territory would be "uneconomic" is not a view shared by all solar developers: Walmart – which intends to develop solar generation projects in FE PA's service territory – supported the Settlement and the Settlement's fifteen-year commitment to include capacity and line losses in the HP Rider as a reasonable compromise.[60]

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[57] *See* Joint Petition, Ex. A (PTC Rider); FE PA Exhibit CDL-2 (HP Rider).

[58] FE PA St. 1-R, pp. 18-19.

[59] *Cf. Penn Renewables*, p. 9 (explaining that UGI's GSR-2 incorporating LMP properly compensated customer-generators).

[60] *See* Settlement, Statement E, p. 3. JSA's suggestion that the cost impact of customer-generators remaining on the PTC Rate is overstated because Mr. Young did not include offsetting capacity and transmission costs (JSA Initial Br., pp. 18-19) is misplaced for reasons discussed in Section III.C.3. In addition, JSA's argument (JSA Initial Br., pp. 19-20, based on testimony by Mr. Heidell) that customers will benefit because FE PA will need to purchase less energy from default service suppliers or receive financial credits based upon the value of energy delivered to PJM is simply wrong. FE PA does not use energy from customer-generators in providing default service. *See* FE PA St. 1-R, pp. 16-17 & FE PA St. 6-R, pp. 3-4. And while FE PA default service customers

2. Risk Premiums

Both CGC and JSA contend that both FE PA and OCA failed to establish that wholesale default service suppliers will include any risk premium in providing default service supply to small commercial customers as a result of increasing customer-generators continuing to receive the PTC Rate.[61] They posit that the testimony of FE PA witnesses Young and Dr. Powers and OCA witness Dr. Ogur should be discounted in part because those witnesses did not quantify risk premiums, did not quiz wholesale suppliers if they included such risk premiums, and could not say if a wholesale bidder had told them a that such premiums exist.[62] CGC also criticizes OCA witness Dr. Ogur for suggesting that risk premiums could arise from customer-generators switching from default supply to competitive supply because an EGS would have no incentive to enroll a customer generator since it "would result in that EGS paying the customer-generator, rather than being paid by the customer-generator."[63]

In its Initial Brief, FE PA explained that the testimony of FE PA witness Dr. Powers established that supplier risk premiums reflected multiple sources of uncertainty, including customer behavior, and that specific quantification of bidder risk premiums was not required by the Commission to establish that risks exist.[64] Similarly, there is no basis to conclude that FE PA (or the OCA) were somehow obligated to conduct a poll of bidders (whose identities are confidential) to ascertain whether wholesale suppliers would consider risks associated with increasing numbers of customer-generators, and neither CGC nor JSA cite any authority suggesting such a requirement. To the extent that CGC argues that

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do receive the benefit of the LMP credit from excess generation, the difference between that LMP credit and the amount paid to customer-generators is part of what gives rise to the excessive costs of net metered generation. *See* FE PA St. 1-R, pp. 16-17.

61 CGC Initial Br., pp. 22-25; JSA Initial Br., pp. 21-23.

62 *Id.*

63 CGC Initial Br., p. 25.

64 FE PA Initial Br., p. 26.

competitive suppliers have no incentive to enroll a customer-generator as a customer, that argument only underscores the lack of actual benefits that a customer-generator delivers to the entity paying for its excess generation.

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

In arguing for inclusion of alleged capacity and transmission benefits from net-metered projects to "offset" the costs of having commercial customers continue to pay the PTC Rider rate to customer-generators under its grandfathering proposals, JSA asserts that it is "hard to understand" why FE PA does not accept JSA's proposal to use negative PLCs and suggests that it might be "rooted in a lack of understanding of negative PLCs and negative NSPLs."[65] But the testimony in this proceeding made clear that the effects of negative PLCs are well-understood by FE PA and the uncertainty and lack of actual benefits that would be derived from what JSA's own witness concedes is an "accounting construct" do not support adoption of negative PLCs.

In its Initial Brief, FE PA explained that using negative PLCs will result in different allocations of cost between utility customers (including between FE PA customers in other default service classes).[66] The capacity and transmission benefits JSA has also asserted – and used in its calculations to "offset" customer-generator net metering expense – are based on assumptions about solar generation by a customer-generator at PJM coincident peaks, and there is no certainty that the customer-generator would in fact be providing excess generation at future times of peak load in FE PA's service territory.[67] Furthermore, there is no guarantee of actual cost savings to offset the on-going costs of customer-generators.[68]

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[65] JSA Initial Br., pp. 23 & 25.

[66] FE PA Initial Br., pp. 28-29.

[67] *Id.*

[68] Tr. 137-38.

JSA's invocation of the use of negative PLCs like Commonwealth Edison Company ("ComEd") and UGI in its Initial Brief do not suggest a different result.[69] Under Illinois law, ComEd is expressly required to pay a kilowatt-hour value for capacity, and no such requirement exists under either the AEPS Act or the Code.[70] And while the Commission approved negative PLCs in UGI's current tariff as part of *UGI Electric*, the Commission's decision approving the settlement in that proceeding does not reflect any actual consideration of the operation and effects of negative PLCs.[71]

The use of negative PLCs is JSA's proposal and JSA has the burden of proof of establishing that negative PLCs are in the public interest. JSA has not met its burden, and the Commission should reject its proposal.

4. Other Costs and Benefits

Both CGC and JSA assert that there are other benefits associated with the energy from customer-generators that the Commission should consider in determining whether customer-generators should remain on the PTC Rider. In its Initial Brief, FE PA explained that the benefits identified by both parties were not certain, were not quantified, and in any event customer-generators were not entitled to compensation for the various alleged benefits from default service customers.[72]

The Initial Briefs of CGC and JSA do not address these flaws. While JSA and CGC emphasize general resource adequacy challenges in light of anticipated data center growth, they do not explain how more customer-generators will address those challenges when:

- The energy from customer-generators is not used to provide default service.[73]
- The energy delivered to the grid from customer-generators is not subject to controls, dispatch signals, or any kind of balancing function, nor is there any

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[69] JSA Initial Br., pp. 24-25.

[70] *See* 220 ILCS §16-107.5(n)(1)(B); FE PA St. 6-RJ, p. 4.

[71] *See UGI Electric*, p. 42.

[72] FE PA Initial Br., pp. 30-31.

[73] FE PA St. 1-R, p. 17.

certainty of where any excess generation from a customer generator might flow.[74]

- Behind-the-meter customer-generators do not participate in PJM's capacity markets and do not directly reduce PJM's forward capacity source requirements.[75]
- Customer-generators are seeking to preserve their entitlement to compensation at the PTC Rider rate instead of participating in wholesale energy and capacity markets or entering into bilateral agreements to provide energy supply.[76]

CGC's Initial Brief continues assertions of unquantified and uncertain benefits reflected in CGC witness Heidell's testimony, including unquantified health benefits and unspecified reductions in distribution system costs for which CGC does not establish customer-generators are entitled to under any provision of the Code, the AEPS Act, or Act 129. CGC's alleged economic benefits are similarly unfounded; for example, CGC relies upon benefits attributable to a report on community solar without explaining how such calculations should apply when customer-generators are not operating as community solar facilities.[77] And CGC's belated attempt to now argue for the same treatment as the anerobic digesters the Commission exempted from the MRPL provisions adopted in *PPL Electric* is clearly flawed;[78] contrary to CGC's contentions, the Commission explained that farms using anaerobic digesters or operating biogas generation systems fueled by biologically derived methane gas were not facilities built "principally to export power" and "are not the no-load customer-generators at which the classification set forth in the Settlement is

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[74] FE PA St. 6-R, p. 3.

[75] *Id.*, p. 7.

[76] *See* FE PA St. 1-R, p. 19.

[77] CGC Initial Br., p. 35 (citing CGC St. 1, p. 16).

[78] CGC Initial Br., p. 37.

directed."[79] Taken together, CGC and JSA's collection of alleged benefits from customer-generators do not provide any basis for rejection of the Settlement.

D. Compliance with Applicable Laws and Regulations

In its Initial Brief, CGC argues that FE PA's MRPL proposal, as incorporated into the Settlement, violates the Commission's regulations, the AEPS Act, and Act 129. The Commission has already rejected the substance of CGC's first two claims in other proceedings, and CGC's new third claim is just as flawed.

As discussed above in Section III.A, CGC's first claim that FE PA's definition of MRPL violates the Commission's regulations rests upon a constrained reading of the language of Section 54.182, which expressly provides that MRPL corresponds to PJM's PLC, or its equivalent, "as may be further defined by the EDC tariff in a particular service territory."[80] The Commission has already explained in *PPL Electric* that there is no violation of Section 54.182 when an EDC incorporates net power flow into its definition of MRPL under the plain language of the Commission's regulation, nor is there any error in making this change through a tariff definition.[81]

CGC's second claim – that the MRPL proposal violates "the text and intent" of the AEPS Act because it does not provide "full retail value" to customer-generators – has also been addressed by both the Commission and the Commonwealth Court. As the Commonwealth Court explained in affirming the Commission's *UGI Electric* decision in *Penn Renewables*:

> In this instance, the record supports the Commission's determination that the GSR-2 rate properly compensates customer-generators for the excess electricity they generate. Per UGI's electrical tariff filing, the GSR-2 rate shall be calculated through a formula that combines several components: the "real-time Locational

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79 *PPL Electric*, pp. 190-91.

80 CGC Initial Br., p. 38 (citing 52 Pa. Code § 54.182).

81 *See PPL Electric*, pp. 168-170, 193 & 198-199. CGC's various assertions relating to customers with peak load less than 25kW are inapplicable as discussed *infra* with respect to its claim that the MRPL classification will violate Section 2807(e)(7).

> Marginal Price [*i.e.*, the wholesale electricity price] during each hour of the billing month"; capacity and transmission costs; administrative and legal costs; taxes; various net metering costs; "*and any other applicable costs of providing default service for the GSR-2 group.*" UGI's Electrical Service Tariff, Rider B at 3 (emphasis added). In other words, this rate accounts for costs pertaining to the generation, transmission, *and* distribution of electricity. Furthermore, James Crist, Penn's sole witness who testified regarding this issue during the Commission's proceedings, admitted that UGI was providing retail service to its customers via the GSR-2 rate. Comm'n Hearing Tr., 10/1/24, at 103. Under these circumstances, we cannot conclude that the Commission improperly determined that the GSR-2 rate will compensate Penn for the full retail value of its excess generated electricity.[82]

Similarly, with respect to the "intent" of the AEPS Act and arguments that UGI's classification would contravene "the General Assembly's intention of fostering the proliferation of distributed electricity generation" which CGC repeats here, the Commonwealth Court concluded that "[t]he record supports the Commission's determination that the GSR-2 rate will compensate customer-generators for the full retail value of their net generated electricity. The GSR-2 rate therefore comports with the purpose of the AEPS Act."[83]

CGC's final claims are that FE PA's proposal violates Act 129 because customer-generators are purportedly small business customers under the Commission's regulations whose MRPL was less than 25 kW in the last twelve months,[84] default service rates of small business customers cannot change more frequently than every quarter under 66 Pa.C.S. § 2807(e)(7), which will not be the case if customer-generators receive service under the HP Rider, and customers will not receive a "single rate" option CGC believes they are entitled to under the Commission regulations.[85] But these claims fare no better CGC's other claims. First, as the Commission and Commonwealth Court concluded in

[82] *Penn Renewables*, p. 9.

[83] *Penn Renewables*, p. 17.

[84] *See* 52 Pa. Code § 54.2.

[85] CGC Initial Br., pp. 41-42 & 45-46.

Penn Renewables,[86] Section 2807(e)(7) of the Choice Act is inapplicable to default service classifications that will only apply to commercial customers with an MRPL of 100 kW or greater. By its own terms, FE PA's HP Rider is not a "small business customer" rate and cannot apply to "small" commercial customers with an MRPL below 25 kW.[87] Moreover, the PA PUC has previously granted a waiver to define FE PA's commercial customers as those with an MRPL under 100 kW, and FE PA has requested waivers of Section 54.187(h)-(j) to permit it to implement its MRPL classification.[88] Accordingly, there is no violation of the Commission's regulations in light of the proper request for waivers by FE PA and incorporated in the Settlement.[89] Contrary to CGC's contention, the Company's HP Rider is a single-rate option that represents the sum of all generation and transmission charges associated with default service for the industrial class, including LMP, and does not include declining block rates or demand charges in accordance with the Commission's regulations at 52 Pa. Code § 54.187(c).[90] Nor was FE PA required to investigate some "alternative tariff" mechanism by which the costs of customer-generators could be spread to other classes, such as residential customers, as CGC suggests,[91] and CGC provided no evidence to meet its burden to support any such proposal.[92]

For its part, JSA asserts that FE PA position is that it can "disregard" the "intent and clear direction" of the AEPS Act by reducing compensation for customer-generators.[93]

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86 *See Penn Renewables*, pp. 10-11 (rejecting claim that UGI's large customer-generator classification violates Section 2807(7)(e) because the large customer-generator rate is not a "small business rate") .

87 *See* FE PA Ex. CDL-2.

88 *See* Joint Petition, p. 21; FE PA St. 4, p. 7.

89 *Cf. Penn Renewables*, pp. 13-17 (addressing regulations and waivers).

90 *See* FE PA St. 5, pp. 3,7; FE PA Ex. CDL-2; Joint Proposed Findings of Fact, ¶ 70.

91 CGC Initial Br., Appendix A, Proposed Findings of Fact No. 88.

92 *See* Section I.B *supra.*

93 JSA Initial Br., p. 28.

JSA cites no authority for this claim, and *Penn Renewables* establishes that there is no error where, as here, a customer-generator will continue to receive "full retail value" under the AEPS Act.[94]

E. Grandfathering Proposals

While CGC does not offer any grandfathering proposal and simply opposes the Settlement's grandfathering period,[95] both JSA and Dimension argue for a longer grandfathering period than proposed in the Settlement, calling for either JSA's 25-year/15-year grandfathering structure or, if not acceptable to the Commission, a ten-year grandfathering period consistent with the Settlement approved in *PPL Electric*.[96] Both JSA and Dimension also object to the Settlement provision that maintains the capacity and line loss provisions of the HP Rider for a 15-year period (similar to *PPL Electric*), with JSA requesting that the Commission strike the provision from the Settlement.[97] The Commission should reject these proposals and approve the two-year grandfathering period modified by the Settlement for several reasons.

First, the assertions of JSA and Dimension (as well as CGC) that a customer's investment in its own facilities located (or that may be located) in FE PA's service territory based on a current tariff entitles that customer to the same rate in the future is clearly wrong. *Penn Renewables* made that clear in the specific context of an EDC's definition of MRPL, and further rejected claims that UGI's classification of customer-generators violated a public policy of fostering distributed electricity generation.[98] In *PPL Electric*, the Commission also rejected CGC's claims based on reliance interests, as well as arguments that a different classification of customer-generators constituted impermissible retroactive

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94 *See Penn Renewables*, p. 17.

95 CGC Initial Br., p. 46.

96 Dimension Initial Br., p. 12; JSA Initial Br., pp. 33-35, 39.

97 Dimension Initial Br., p. 12; JSA Initial Br., pp. 7-8.

98 *Penn Renewables*, pp. 14, 17.

ratemaking or discrimination.[99] CGC's citation to *Sunrise Energy, LLC v. FirstEnergy Corp.*,[100] to support its argument that FE PA's classification is "contrary to sound public policy,"[101] is also misplaced. In that case, the Commonwealth Court concluded that public policy arguments were "best addressed to the General Assembly, which has the power to amend the [AEPS Act] to include a statutory remedy."[102] And while both CGC and JSA note the Commission's decision to maintain PPL Electric's earlier classifications for agricultural customer-generators in *PPL Electric* and its consideration of reliance interests, the Commission concluded the interests of those generators were quite different, with the agricultural systems serving "substantial on-site farm load" and not the same as "the no-load customer-generators at which the classification set forth in the Settlement is directed."[103]

Second, the 25-year period proposed by JSA will result in unaffordable rates. As explained above and in FE PA's Initial Brief, it would not be effective in FE PA's service territory where the PTC and true-up expenses could result in exceptionally high increases in the PTC.[104] Notably, JSA relies upon the same uncertain benefits FE PA has already addressed to attempt to make its proposal more palatable, but the uncertainty of those benefits discussed above underscores the risk for customer-generators of a longer grandfathering period.[105]

Third, the *PPL Electric* 10-year grandfathering period JSA and Dimension now advocate for in this proceeding includes a cap on customer-generator capacity that would

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99 *PPL Electric*, pp. 171, 202.

100 148 A.3d 894 (Pa. Commw. Ct. 2016) ("*Sunrise Energy*").

101 CGC Initial Br., p. 13.

102 *Sunrise Energy*, p. 908.

103 *PPL Electric*, pp. 189-91.

104 *See* FE PA Initial Br., pp. 33-34 & FE PA St. 1-R, pp. 23-24.

105 JSA Initial Br., p. 36; *cf.* Section III.C *supra* and FE PA Initial Br., pp. 23-31.

limit upward pressure to the applicable PTC to around $.02/kWh.[106] Neither JSA nor CGC Dimension proposed a capacity cap in this proceeding until JSA's Initial Brief, when JSA proposed a "shorter" grandfathering period for the Penn Power Rate District and an unspecified MW cap on the ground that those terms would be consistent with *PPL Electric*. JSA's new terms remain entirely undefined, and there is no basis to adopt its proposal now.[107]

Finally, in reaching a Settlement in this proceeding, FE PA agreed to a modification of its original two-year grandfathering period to include capacity and line losses in the HP Rider for fifteen years (subject to a material change in PJM's capacity markets). JSA objects to this provision on the grounds that was 'introduced for the first time' in the Settlement and creates an implication that components can be removed after 2041, thereby creating uncertainty.[108] Similarly, Dimension argues that the provision is "unfair" because only FE PA can modify its terms depending on developments in the PJM capacity market and its due process rights were violated because it had no "meaningful opportunity" to "be heard" concerning a provision announced four days before hearings.[109]

None of these arguments have merit. As reflected in Dimension's brief, Dimension (and other parties) knew of the provisions of the Settlement with which they are concerned prior to hearings.[110] With respect to the substance that concerns both JSA and Dimension, the provisions align key components of FE PA's HP Rider consistent with very similar provision in the *PPL Electric* settlement. The Settlement provides:

> For purposes of determining compensation for net excess generation for customer-generators taking service under the HP Rider, such compensation shall include capacity and line loss portions of the HP Rider until May 31, 2041, absent a material

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[106] *PPL Electric*, p. 133.

[107] JSA Initial Br., p. 39.

[108] *Id.*, pp. 7-9.

[109] *See* Dimension Initial Br., pp. 12, 16.

[110] *Id.*, pp. 1-2 (explaining that the terms of the non-unanimous settlement announced on June 11, 2027, included a new provision concerning components of the HP Rider).

> change in the capacity markets operated by PJM. In the event of such an occurrence, FE PA will notify and meet with parties to this Settlement, including Walmart, to discuss the proposed changes and their impact on customer-generator compensation at least 30 days in advance of any Commission filing.[111]

Similarly, paragraph 102 of the *PPL Electric* settlement provides:

> 102. For purposes of determining compensation for net excess generation for customer-generators taking service under Rate GSC-2, such compensation shall include (i) the capacity portion of Rate GSC-2 as defined hereafter, (ii) line losses; and (iii) a gross-up of the generation component for the Gross Receipts Tax ("GRT"). . . .[112]

Walmart's witness Steven Chriss testified regarding the importance of customer-generator compensation and referenced this provision of the *PPL Electric* settlement.[113] While JSA and Dimension may not agree, Walmart – as another solar developer – concluded that the Settlement's inclusion of capacity and line losses was a "reasonable compromise" and provided "some stability" for their solar development plans.[114] The "reasonable compromise" implementing a portion of the *PPL Electric* settlement is clearly supported by substantial evidence and the Commission should therefore approve the Settlement's grandfathering provision.

IV. RATE DESIGN AND COST RECOVERY

A. Price to Compare Default Service Rate Rider

Most parties did not address this issue in their Initial Briefs. To the extent parties raised issues relating to the Price to Compare ("PTC") and MRPL, FE PA addresses those issues in Section III.

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[111] Joint Petition, ¶ 38.

[112] *PPL Electric*, p. 38. The remaining portion of page 102 includes a PPL-specific definitions relating to capacity; FE PA's HP Rider includes capacity as well based on the cost paid to wholesale default service suppliers. *See* FE PA Exhibit CDL-2.

[113] *See* Walmart St. No. 1, p. 9 (discussing the "PPL equivalent of the HP Rider").

[114] *See* Joint Petition, Statement E, p. 3.

B. Hourly Pricing Default Service Rider

In its Initial Brief, RESA opposes the Company's proposal to eliminate the HP Rider's fixed adder of four dollars because the HP Rider does not include NITS and reiterates its argument that NITS charges should be included in full requirements products. The Company fully addresses this issue in its Initial Brief and in Section II.B. above.[115] The Commission should therefore approve the HP Rider as proposed by FE PA and adopted under the Settlement without modification.

In its Initial Brief, RESA recommends that the Commission also direct FE PA to include all of its costs to serve industrial customers in the administrative component of the HP Rider, including unbundling FE PA's overhead costs for billing, customer care, computers, customer information systems, desks, chairs, offices, and personnel spending time on default service issues.[116] This issue, and the Commission's prior decision (affirmed by the Commonwealth Court) rejecting a similar proposal for PECO Energy, is addressed in FE PA's Initial Brief.[117]

V. CUSTOMER REFERRAL PROGRAM

As described in FE PA's Initial Brief (pp. 38-40), the Company's current CRP is set to terminate on May 31, 2027, in accordance with the Commission-approved DSP VI Settlement.[118] In accordance with the DSP VI Settlement, the Company convened a collaborative to evaluate whether a successor CRP should be implemented. The Company did not propose to implement a successor CRP for DSP VII based on the feedback provided by parties who attended the collaborative as well as the analysis of the data collected and reviewed during the collaborative, which showed significant declining supplier participation and customer interest.[119]

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[115] *See* FE PA Initial Br., pp. 13-17, 37-38.

[116] RESA Initial Br., p. 28.

[117] *See* FE PA Initial Br., pp. 35-37.

[118] FE PA St. 4, pp. 10-11.

[119] FE PA St. 4, p. 11; FE PA St. 4-R, pp. 8-9.

In their respective briefs, RESA and Town Square/WGL oppose the scheduled termination of the CRP and recommend that the Commission now direct FE PA to work with stakeholders to identify reforms to improve the CRP.[120] RESA and Town Square/WGL base their argument on the ground that the program has produced customer savings, relying on a data point provided by the Company in response to a discovery interrogatory that stated that customers participating in the CRP achieved $750,000 in cumulative savings from January 2025 through February 2026.[121] Town Square/WGL also argue that because there is no evidence the CRP imposes costs on FE PA, declining participation alone cannot justify its elimination.[122]

The $750,000 figure represents savings at the moment of enrollment based on the then-current PTC, not supplier competitive offerings, and suffers from the same issues regarding lack of affirmative customer choice when the discounted contract term ends discussed in Section VI below. The recommendation that the Commission should direct FE PA to work with stakeholders to identify reforms that improve supplier and customer participation is unwarranted: the collaborative held under the DSP VI Settlement was precisely the forum that RESA and Town Square/WGL are now requesting. RESA was represented at the collaborative, provided the data regarding the Company's CRP, and asked to provide their feedback on the continuation of the CRP,[123] but RESA failed to propose any improvements during the collaborative, and neither RESA nor Town Square/WGL provided FE PA any additional feedback.[124]

The Commission has approved the end of CRP-equivalent programs in other EDC territories, including in FE PA's service territory, as of May 31, 2027.[125] Having declined

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[120] RESA Initial Br., pp. 28-31; Town Square Initial Br., pp. 9-13.

[121] *See* RESA Initial Br., p. 29; Town Square Initial Br., p. 9.

[122] Town Square Initial Br., pp. 9-13.

[123] *Id.*, pp. 8-9.

[124] *Id.*

[125] *See* OCA St. 2, pp. 5-6; CAUSE-PA St. 1, p. 29.

the opportunity to recommend reforms, RESA and Town Square/WGL's belated advocacy for a successor program should be rejected, and the CRP should terminate in accordance with the DSP VI Settlement.

VI. SUPPLIER COORDINATION TARIFF CHANGES AND RETAIL SHOPPING ISSUES

As described in FE PA's Initial Brief (p. 8), the Settlement incorporates the Company's original proposed changes to FE PA's Supplier Tariff designed to encourage customers to make intentional choices about the cost of their generation supply and to incentivize EGSs to consider the impact of their pricing on customer affordability. The Initial Brief and the Settling Parties' Joint Proposed Findings of Fact details the harms experienced by FE PA's residential customers arising from the current protocols governing EGS contracts and unlimited EGS access to POR under the Company's current Supplier Tariff.[126] Those harms – including higher uncollectible expense paid by customers, higher termination rates for shopping customers, and increasing numbers of complaints involving EGSs – materialized despite the customer notice requirements relating to changes in the terms and conditions of the EGS-customer relationship and the Company's existing POR clawback mechanism that has been in place since June 1, 2017.[127] Crucially, under the Settlement, EGSs remain entirely free to offer any price, contract term, or value-added product they wish, consistent with Commission regulations.[128] The Settlement's provisions preserve retail choice while addressing the harms arising from consistently paying more for electric generation supply established by the record evidence in this case.

The Supplier Tariff changes and proposed waivers are opposed by RESA, Town Square, the EGS Parties, WGL Energy, and Constellation, with only RESA and Town Hall providing any evidence in this proceeding. As discussed in Sections VI.A. to VI.C. below, these parties' objections to the Settlement and reliance on the evidence offered by RESA

[126] FE PA Initial Br., pp. 40-42; Joint Proposed Findings of Fact, ¶¶ 92, 95 & 98.

[127] *See* FE PA St. 1 (Corrected), pp. 26-27; Joint Proposed Findings of Fact, ¶ 98.

[128] FE PA Initial Br., pp. 48-49; Joint Proposed Findings of Fact, ¶ 109.

and Town Square do not undermine the consistency of the Settlement with established law nor the substantive evidence that demonstrates that the Supplier Tariff changes and proposed waivers are appropriate and in the public interest.

A. Return of Customers to Default Service at Contract Expiration

Under the Settlement, EGSs entering into new fixed-duration contracts with residential customers after June 1, 2027, must return those residential customers to default service at the conclusion of fixed-duration contracts absent an affirmative customer choice to remain with the EGS in response to the notices required by the Commission's regulations at 52 Pa. Code § 54.10.[129] To implement these changes, the Settling Parties requested a waiver of Section 54.10(3) of the Commission's regulations for these new contracts.[130] None of the various arguments against the affirmative consent requirements outlined in the Settlement offered by the opposing parties have merit.

The Section 54.10(3) "Plain Language" and Choice Act arguments. Constellation, RESA, and Town Square/WGL all contend that requiring affirmative action by residential customers to remain with an EGS after the end of a fixed-duration contract FE PA's is inconsistent with the text of at 52 Pa. Code § 54.10(3) that provides that those fixed-duration contracts "shall be converted" to either a month-to-month contract or another fixed-duration contract with customer cancellation rights.[131] These parties argue

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[129] Joint Petition, ¶ 66.

[130] *Id.*, ¶ 73.

[131] 52 Pa. Code § 54.10(3).

that a waiver of these autorenewal provisions is not justified and will contravene the Choice Act and the Commission's *PECO DSP VI*[132] and *PPL DSP V*[133] decisions.

As FE PA explained in its Initial Brief, the Supplier Tariff revisions do not restrict customer choice as a customer can choose to remain with the customer's EGS in response to the notices provided by the EGS.[134] Nevertheless, FE PA recognizes that the Commission has previously rejected an affirmative consent requirement at the end of contracts created through other EDCs' customer referral programs under the *CAUSE-PA* and *RESA* framework, where the Commission concluded that such requirements were "restrictions" on competition and the record evidence in those cases did not support a finding of harm specific to CRP customers as a result of the existing program design.[135] But those cases focused only on the amount paid above the PTC by shopping customers generally and did not present the same evidence shown in this proceeding of both costs well above the PTC and related harm specific to residential shopping customers and other customers.[136]

The record in this case includes extensive evidence of the resulting harm from FE PA residential customers overpaying for generation supply – including the examples of harm identified by the Commission in PECO DSP VI and PPL DSP V (higher termination rates and uncollectible expense associated with shopping accounts):

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[132] *Petition of PECO Energy Co. for Approval of Its Default Serv. Program for the Period from June 1, 2025 through May 31, 2029*, Docket No. P-2024-3046008 (Opinion and Order entered Nov. 7, 2024) ("*PECO DSP VI*").

[133] *PPL Elec. Utils. Corp. for Approval of Its Default Serv. Plan for the Period June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019356 (Opinion and Order entered Dec. 17, 2020) ("*PPL DSP V*").

[134] FE PA Initial Br., pp. 47-49

[135] *Id.*, p. 48 (citing *PECO DSP VI* and *PPL DSP V*).

[136] *See PECO DSP VI*, pp. 79-80; *PPL DSP V*, pp. 96-98.

- FE PA's residential shopping customers paid $82 million more than the PTC in 2025, $395 million more from 2022 through 2026, and $888 million more since 2017.[137]
- Residential shopping customers are up to ten times more likely to have their service terminated than residential default service customers; such customers are thus not simply paying more but also more likely to lose service.[138]
- Termination rates in 2025 ranged between 14-22% for residential shopping customers compared to just 1-3% for residential default service customers.[139]
- The uncollectible expense per FE PA residential shopping customer was $22.83, or almost three times more than the uncollectible expense per residential default service customer ($7.82).[140]
- From 2022 to 2025, on average, 40% of the Company's total residential generation uncollectible expense was attributable to purchased EGS accounts receivable even though only 18% of residential customers were shopping over that same period.[141]
    - Complaints involving EGSs in 2025 were 50% higher than in 2024.[142]

The various parties opposing the Supplier Tariff provisions strive to rebut this evidence, but fail to do so. Indeed, not one of those parties disputes the amounts above the PTC paid by residential customers. Not one of those parties disputed the ten-to-one termination rate disparity between default service customers and residential shopping customers or presented alternative calculations of uncollectible expense. And where they try to argue against the data – as Town Square/WGL does in asserting that default service

[137] FE PA St. 1, p. 22; Joint Proposed Findings of Fact (Corrected), ¶¶ 92 & 95.

[138] *See* FE PA Ex. DMY-10; CAUSE-PA St. 1, pp. 23-25.

[139] CAUSE-PA St. 1, pp. 24-25.

[140] FE PA St. 1-R, pp. 9-10; FE PA Ex. DMY-12; *see also* CAUSE-PA St. 1-R, pp. 17-18.

[141] FE PA St. 1-R, pp. 9-10; FE PA Ex. DMY-12.

[142] FE PA St. 1 (Corrected), p. 22.

customer write-offs are higher in terms of dollar amounts and as a percentage of FE PA's uncollectible expense than shopping customer write-offs[143] – they miss the point. If only 18% of customers are shopping but those customers generate 40% of the uncollectible expense, that underscores the harm created by higher shopping prices. Town Square/WGL also attempts to deflect attention from the "much higher" involuntary termination rates for FE PA's shopping customers by suggesting that the raw data on residential customer write-offs provided in discovery for 2022-2025 (and attached to RESA Exhibit FL-28) shows that "nearly none" of that bad debt was associated with shopping accounts.[144] Despite Town Square/WGL's attempt to spin the facts to their advantage, the average per-customer write-off balance for shopping customers ($2,173) was more than double the amount for default service customers ($972), which correlates to a higher risk of involuntary termination.[145]

Despite repeated assertions that customers are paying higher prices for value-added services and products, none of the parties provided evidence regarding the higher-value services and products actually purchased by FE PA customers. RESA declined to provide information about its members' products or pricing in FE PA's service area on the grounds that it did not have access to its members' retail contracts. **[BEGIN HIGHLY CONFIDENTIAL]**

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[**END HIGHLY CONFIDENTIAL**][146] If a customer values the additional benefits that an EGS is actually providing, including such offerings as renewable energy, the customer can stay with the

[143] Town Square/WGL Initial Br., pp. 36-39.

[144] *Id.*, pp. 38-39.

[145] See RESA Ex. FL-28.

[146] FE PA St. 1-R, pp. 11-12.

customer's EGS by affirming their choice after receiving the EGS's notices under Section 54.10(3).

Unlike the EDCs in *PECO DSP VI* and *PPL Electric V*, FE PA has already tried to employ a "reasonable alternative" to the Supplier Tariff provisions to address particularly high EGS pricing and harms that the current "less restrictive" notice protocol has not mitigated. FE PA's clawback charge is assessed to EGSs whose write-offs as a percentage of revenues are 200% higher than their peers and whose average price per kWh is greater than 150% of the average PTC of the Company.[147] As FE PA witness Young demonstrated, continuing clawback assessments in the face of continuing customer harm is not evidence that the mechanism is working and the clawback charges only recover a fraction of the costs imposed by EGSs whose business model involves charging prices well above the PTC and thereby generate very high write-off percentages.[148]

Where, as here, the evidence has established that customers are harmed well beyond paying large amounts above the PTC over many years and the "reasonable alternative" has failed, a requirement that customers affirmatively choose to stay with their EGS as their contract expires does not contravene the Choice Act under *CAUSE-PA* and *RESA*.

The Appropriateness of a Waiver. RESA and Town Square contend that a waiver of Section 54.10(3) is inappropriate, as that section only applies to EGSs and not EDCs,[149] and the EGS Parties and Town Square/WGL argue that FE PA should have sought to amend the Commission's regulations instead of seeking a waiver (and the Commission is also legally foreclosed from granting such a waiver).[150] Both contentions are wrong. Nothing in the Commission's regulations providing for waiver mandates that only those parties referenced in the regulation may petition for waiver and, in any event, FE PA is clearly affected by the current protocol given the higher shopping customer uncollectible

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[147] FE PA St. 1 (Corrected), pp. 25-27.

[148] *Id.*, pp. 26-27.

[149] RESA Initial Br., p. 34; Town Square/WGL Initial Br., p. 14.

[150] EGS Parties Initial Br., p. 8; Town Square/WGL Initial Br., pp. 15-20.

expense, increased termination activity, and rising customer complaints against EGSs.[151] Moreover, FE PA is seeking the waiver in order to modify its own Supplier Tariff and needs a waiver to avoid a conflict between those tariff provisions and the Commission's existing regulations.[152] The EGS Parties' and Town Square/WGL also assume that the Commission's own regulations for granting waivers are somehow limited and that FE PA is seeking something other than waiver, i.e., a permanent change in the Commission's regulations,[153] and that is not the case. FE PA is seeking the necessary waivers only as permitted under the Commission's waiver regulations, and any waiver granted by the Commission in this proceeding is not permanent: it will expire at the end of DSP VII unless again considered and approved by the Commission.[154] RESA's heavy reliance upon the Commission's statement twelve years ago in approving Section 54.10(3) is also misplaced.[155] The Commonwealth Court has since made clear that the Choice Act is not intended to facilitate "unbridled competition," and restrictions may be necessary in order to address customer harm.[156]

Town Square/WGL's argument that FE PA's waiver would create a "parallel contract renewal system" in FE PA service territory is similarly inapposite.[157] Default

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[151] 52 Pa. Code § 5.43(b).

[152] FE PA St. 1, pp. 18-19.

[153] EGS Parties Initial Br., pp. 10-11; Town Square/WGL Initial Br., pp. 16-17.

[154] 52 Pa. Code § 5.43.

[155] RESA Initial Br., pp. 34-35 (citing *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Docket No. L-2024-2409385, Final-Omitted Rulemaking Order ("2014 Rulemaking") (Order entered Apr. 3, 2014), at 38).

[156] *CAUSE-PA*, at 1101.

[157] Town Square/WGL Initial Br., p. 26.

service proceedings are already EDC-specific, as well as retail programs and supplier coordination tariffs. Not every EDC has a CRP or a clawback mechanism, as FE PA does, and EGSs operate among different Pennsylvania utilities as well as in different states with different retail program requirements.[158] Given the specific, documented harm in FE PA's service territory that has continued under the current 54.10(3) notice protocol despite FE PA's clawback mechanism, a waiver of Section 54.10(3)'s requirements during DSP VII is appropriate.

The "Slamming" Argument. RESA, the EGS Parties, Town Square/WGL and Constellation all argue that returning customers to default service without affirmative customer consent constitutes "slamming," i.e., the unauthorized switching of a customer's EGS.[159] This is not so. FE PA's proposed Supplier Tariff revisions would only go into effect for new contracts executed after June 1, 2027. If a customer executes an EGS contract after that date under the proposed Supplier Tariff, the contract will provide that the customer will return to default service in the absence of making an affirmative election to remain with the customer's EGS.[160]

The Chapter 57 "Switching Law" Argument. Constellation also argues that even if the requirements of Section 54.10(3) are waived, that waiver does not "solve the separate switching-law problem" under Chapter 57 of the Commission's regulations if an EGS remains willing to serve and a customer has not authorized the switch.[161] But

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[158] *Cf. PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period from June 1, 2025 through May 31, 2029*, Docket No. P-2024-3047290, Order at 1-2 (Nov. 7, 2024) (adopting Recommended Decision to approve settlement petition eliminating standard offer program); FE PA Initial Br., p. 53 (noting that Town Square operates in Maine without POR).

[159] EGS Parties Initial Br., p. 6; RESA Initial Br., pp. 37-41; WGL/Town Square Initial Br., p. 21; Constellation Initial Br., p. 11.

[160] *See* FE PA St. 4, Exhibit CDL-4.

[161] Constellation Initial Br., p. 9.

Constellation's argument is inconsistent with its own Initial Brief, in which Constellation explicitly states that Section 54.10(3) "controls and dictates the outcome here."[162] If Section 54.10(3) "controls," then a properly granted waiver of that regulation should "control the outcome" as well.[163]

The Maryland Senate Bill 1 Argument. RESA also argues that FE PA's proposed revisions "closely resemble" recent legislation in Maryland that, in RESA's view, led to the disappearance of "meaningful competitive supply options."[164] But as Mr. Young explained, the Maryland legislation was a complete overhaul of the retail electric market in Maryland, including price caps for residential supply and contract term limits.[165] The proposed revisions to FE PA's Supplier Tariff provisions simply do not regulate pricing or restrict customer choice.[166]

The "Customers May Pay More" Argument. RESA and Town Square/WGL contend that the Supplier Tariff revisions are not designed to address affordability because a customer could actually end up paying more for electricity supply if the PTC is higher than a supplier's renewal offer if the customer is returned to default service.[167] Contrary to their contentions, this possibility underscores that the Supplier Tariff provisions are about ensuring that customers make informed choices about their electric generation

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[162] *Id.*

[163] Town Square/WGL's argument that FE PA should have requested a waiver of 52 Pa. Code § 54.5, *see* Town Square/WGL Initial Br., pp. 22-23, similarly fails; there was no need to request a waiver of that regulation simply because the Commission "never suggested" that Section 54.5 should contain an affirmative consent requirement in light of the provisions of Section 54.10(3).

[164] RESA Initial Br., pp. 49-50; *see also* Town Square Initial Br., p. 40.

[165] FE PA St. 1-R, pp. 12-13.

[166] *See id.*

[167] Town Square/WGL Initial Br., p. 25; RESA Initial Br., p. 48; Constellation Initial Br., pp. 13-14.

supply: if a customer's EGS is offering a lower price, then the customer is entirely free to choose to remain with that EGS.

B. Quarterly Affirmation for Variable Rate Contracts

The Settlement incorporates revisions to FE PA's Supplier Tariff that will also require customer consent on a quarterly basis for month-to-month variable-rate products to encourage customers to make choices about the cost of their generation supply and help mitigate the adverse impact of above-PTC prices on customer bills and affordability for the same reasons discussed in Section VI.A. above.[168] The objections to quarterly affirmation of variable rate contracts by RESA, the EGS Parties, Constellation, and WGL/Town Square largely duplicate the objections made to the proposed requirement for affirmative consent for fixed contracts and are also addressed above. To the extent those parties offer additional arguments, those arguments also fail.

Repeated Consent to Variable-Rate Contracts That Are Cancellable. Parties opposing the quarterly affirmation requirement argue FE PA's Supplier Tariff revisions effectively convert a customer's choice to be on a variable rate contract into a requirement to confirm that choice every quarter.[169] These parties insist that the Commission fully considered variable-rate contracts and adequately addressed such contracts in the 2014 Rulemaking and existing regulations, while FE PA and other parties have not demonstrated actual harm arising from variable rate contracts. As with fixed contracts, simply relying upon the existing Section 54.10(3) notices and the 2014 Rulemaking after 12 years to reject an affirmative consent requirement does not reflect consideration of the harms documented in this proceeding. As CAUSE-PA witness Patrick Cicero explained, "In light of the evidence in this case showing excessive charges in the residential shopping market and correspondingly higher rates of termination and uncollectible expenses, requiring

[168] Joint Petition, ¶ 66.

[169] *See, e.g.*, EGS Parties Initial Br., p. 13.

affirmative and informed consent before exposing customers to higher prices is both appropriate and necessary."[170]

Increased Costs for Suppliers. RESA and other parties also argue that quarterly affirmation of month-to-month variable-rate contracts would impose unnecessary implementation costs on suppliers.[171] While the EGS Parties maintain that the record is "replete" with evidence of such increased costs,[172] neither RESA nor any of the other EGSs in this proceeding ever quantified such costs, and FE PA witness Young made clear that any implementation costs for FE PA would be minimal.[173]

C. Changes to Purchase of Receivables Program

In the Settlement, the Joint Petitioners agreed to revisions to FE PA's POR program for all EGS customer contracts entered into after June 1, 2027 in which EGSs on utility consolidated billing ("UCB") must use "rate-ready" billing and charge a rate that is at or below the PTC at the time of the customer's enrollment transaction or rate change transaction to be eligible to use POR for that customer account.[174] The Company will phase out its existing clawback mechanism over the first year of the DSP VII term if its proposed POR program changes are approved by the Commission.[175] Eliminating POR for residential and commercial accounts where EGSs have charged prices higher than the PTC will substantially reduce FE PA customers' exposure to unreasonable EGS-driven

[170] *Cf.* CAUSE-PA St. 1-R, p. 25. Constellation's apparent belief that that the Choice Act requires similar consent requirements for varying default service prices is not supported by the Choice Act provisions on which Constellation relies. *See* Constellation Initial Br., p. 5 (citing 66 Pa. C.S. § 2804(6), which addresses comparable access to transmission and distribution facilities).

[171] RESA St. 1, pp. 13, 36.

[172] EGS Parties Initial Br., p. 13.

[173] FE PA St. 1-R, p. 13.

[174] Joint Petition, ¶ 67.

[175] *Id*.

uncollectible expenses.[176] EGSs that choose not to use rate ready billing or that wish to charge rates higher than the PTC at the time of enrollment or a price change can still use UCB and arrearages would remain with the EGS instead of being purchased by FE PA without any discount under FE PA's current Supplier Tariff.[177]

RESA, the EGS Parties, Town Square/WGL, and Constellation all oppose the Settlement's revisions to FE PA's POR program on a variety of grounds, including arguments that the changes are unauthorized rate regulation, discriminatory, damaging to the competitive market, and unjustified in light of the evidence FE PA has presented that the existing POR causes any harm. The Commission should reject each of these arguments.

As a threshold matter, the EGS Parties' argument that the Commission has the authority to direct EDCs to implement POR programs but not POR with advance remittances to EGSs is irrelevant:[178] the voluntary EDC payment to EGSs before the EDC has been paid without recourse if customers do not pay their bills is the critical benefit of FE PA's POR program that EGSs wish to preserve. As FE PA witness David Young explained: "Under [FE PA's] program, FE PA pays the face value of the accounts receivable without recourse to the EGS regardless of what the Company is actually able to collect from customers." And as the Commission plainly stated in its order approving PPL Electric's POR program in which PPL agreed to purchase EGS receivables, such a voluntary assumption of obligations cannot be compelled by the Commission:

> First, we stress that the POR Program offered by PPL is voluntary and contains provisions that, if directed by the Commission, would be inconsistent with our regulations and the Code in a manner that might impact PPL negatively. *We agree with PPL that authority does not exist for the Commission to compel any of our*

[176] *See* FE PA St. 1 (Corrected), p. 29.

[177] *See* FE PA St. 1 (Corrected), p. 28.

[178] EGS Parties Initial Br., pp. 14-15.

> *jurisdictional EDCs to create and offer such a POR Program in the competitive electric generation marketplace.*[179]

In its Initial Brief, Town Square/WGL explains exactly what EGSs are seeking to preserve: "If suppliers must bear full credit risk for competitive products that can be above the PTC at the time of enrollment depending on market conditions, many suppliers will rationally reduce offerings or exit the market."[180] In other words, the EGSs opposing FE PA's revisions to its voluntary POR program changes want to continue to preserve their ability to charge prices above the PTC without concern for customer credit risk since FE PA will purchase the EGS receivable.[181] Stated simply, those EGSs benefit from unrestricted access to guaranteed payments that reduce accountability at the expense of the Company and its customers.

Given the voluntary nature of POR programs in which EDCs purchase EGS receivables and absorb collection risk that ultimately drives up costs recovered from all residential and commercial customers, changing the Company's current eligibility parameters does not constitute a restriction on competition, subject to the requirements of *CAUSE-PA* and *RESA*. As the Commission has explained with respect to FE PA's POR program, "the participation of the EGS in a POR is voluntary and as such, the EGS has implicitly assented to modifications of the program, assuming such modifications are

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[179] *Petition of PPL Utilities Corp. Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge*, P-2009-2129502 (Opinion and Order entered Nov. 19, 2009), p. 16.

[180] Town Square/WGL Initial Br., p. 30.

[181] Town Square/WGL argue that customers benefit from this arrangement because EGSs can offer products above the PTC at the time of enrollment that protect customers from future PTC increases and/or provide other benefits that customers may value. Town Square/WGL Initial Br., pp. 29-30. But as discussed in Section VI.A *supra*, the record lacks evidence regarding the higher-value services and products actually purchased by customers.

reviewed and approved by the Commission according to procedural due process."[182] In any event, the record evidence in this proceeding does establish harm in the form of higher uncollectible expense for FE PA customers associated with residential shopping accounts even after FE PA has operated its clawback mechanism.[183] While RESA asserts that FE PA's concerns about residential customer affordability does not justify applying the limitations on POR provided under the Settlement uniformly to all applicable customer classes (residential and commercial), as previously explained, the Commission can approve POR program changes without a specific finding of class-specific harm.

Contentions that FE PA's POR program revisions are somehow discriminatory or constitute "price regulation" have no merit. Any and all EGSs can continue to charge whatever price they wish for whatever competitive product they offer to customers. The POR revisions simply mean that EGSs will remain responsible for arrearages for the products they choose to sell at the price they choose without transferring the risk of higher demonstrated uncollectible expense of EGS prices above the PTC to FE PA customers.

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[182] *Respond Power, LLC v. Pa. Elec. Co.*, Docket Nos. C-2016-2576287 & C-2017-2631326 & *Respond Power, LLC v. West Penn Power Company,* Docket Nos. C-2016-2576292 & C-2017-2631331 (Opinion and Order entered June 13, 2019), *aff'd*, 2017 WL 3116428 (Pa. Commw. Ct. 2017).

[183] FE PA St. 1 (Corrected), pp. 25-26; Joint Proposed Findings of Fact, ¶¶ 104-06.

VII. CONCLUSION

For the reasons set forth above and in FE PA's Initial Brief and the Settlement, the Commission should approve DSP VII, as modified by the Settlement, and reject proposed modifications to FE PA's MRPL proposal and the supplier coordination tariff modifications set forth in the Settlement. In addition, the Commission should (1) make the findings required by 66 Pa.C.S § 2807(e)(3.7); (2) grant the waivers requested in the Joint Petition; and (3) grant such other approvals as may be needed to fully implement FE PA's DSP VII as set forth in the Joint Petition.

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