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July 22, 2026

**VIA ELECTRONIC FILING**

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

RE: Petition of FirstEnergy Pennsylvania Electric Company for Approval of Default Service Program for the Period From June 1, 2027 through May 31, 2031; Docket No. P-2026-3060298; **REPLY BRIEF OF SHIPLEY CHOICE, LLC D/B/A SHIPLEY ENERGY AND INTERSTATE GAS SUPPLY, LLC D/B/A IGS ENERGY**

Dear Secretary Homsher:

Enclosed for filing with the Commission is the Reply Brief of Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy ("EGS Parties") in the above-captioned matter. Copies of this Brief have been served in accordance with the attached Certificate of Service.

If you have any questions, please do not hesitate to contact my office.

Very truly yours,

Todd S. Stewart
*Counsel for Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy ("EGS Parties)*

TSS/jld
Enclosure
cc: Administrative Law Judge Mark A. Hoyer (via electronic mail – mhoyer@pa.gov)
Administrative Law Judge Erin L. Gannon (via electronic mail – egannon@pa.gov)
Per Certificate of Service

## CERTIFICATE OF SERVICE

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

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DATED: July 22, 2026

Todd S. Stewart

**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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# REPLY BRIEF
# OF SHIPLEY CHOICE, LLC D/B/A SHIPLEY ENERGY AND INTERSTATE GAS SUPPLY, LLC D/B/A IGS ENERGY

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DATED: July 22, 2026

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# I. INTRODUCTION

FirstEnergy Pennsylvania Electric Company (FE PA) and its allies of convenience, the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania ("CAUSE-PA") and the Office of Consumer Advocate ("OCA") have proposed three fundamental changes to the retail market in this proceeding. They have failed to support the proposed changes to the Commission's longstanding policy, regulations and/or the Public Utility Code. These changes are not subtle tweaks, they represent complete about-faces on Commission policies that have been functioning as promulgated nearly two decades ago. One proposed change addresses FE PA's purchase of receivables ("POR") program; and the other two address proposed requirements for affirmative consent for contract renewals and customers on variable rate contracts that would require customers to constantly repeat affirmations, with the risk of being forcibly switched to default service hanging in the balance. These affirmative consent proposals are directly contrary to the Code, a situation that the Commission cannot fix with a mere waiver, while the third attacks the POR program that the Commission has consistently viewed as essential to the competitive market for almost 20 years. None of these proposals are accompanied by evidence showing that the proposed "fixes" will solve the concerns alleged, or that they will not cause negative consequences that outweigh and perceived benefit.

At the heart of all three of FE PA's proposals is the contention that aggregate dollar, point-in-time comparisons made between competitive offers provided by suppliers and the price to compare ("PTC"), produce results that demonstrate harm to customers from shopping in the form of paying prices higher than the PTC at some point in time. These misguided comparisons disregard the obvious - that the electricity market in Pennsylvania is an open market and that supplier rates are not regulated or regulatable. The PTC is not a forward-looking market price, a price set to recover costs of a historical procurement of a specific product and is adjusted and reconciled on a periodic basis; it also is not a binding contract to sell electricity at a specific rate, like suppliers are required to do; and, finally, the PTC changes every six months. Most critically, there is nothing in the Code that endorses the PTC as the benchmark price that rules all other prices.

Comparisons between market prices and the PTC also ignore the evidence that on any given day, there are a number of supplier offers of varying duration that are below the PTC listed on the Commission's PaPowerSwitch website. Those offers can be three month offers or three year offers and depending on how the PTC changes in any given month, they may be less than or more than the PTC. These offers can be for a range of product types – long term fixed price, clean energy, EV charging rates, the variety of products is broad. There is no evidence that the customers who contract for these products don't receive value for them or that the suppliers providing them have acted outside the regulations. Rather, FE posits that any price above the PTC at any moment in time is harm. That single contention is simply and plainly wrong.

The Code does not make the PTC the point on the scale against which all offers are determined to be good or bad. Instead, the Code recognizes the opposite; that a competitive market will produce a multitude of products and that it will be the market that control prices – not the Commission and definitely not the EDC.[1]

Both FE PA and CAUSE-PA's arguments, while admitting that the Commission has regulations that prohibit the specific changes they propose, ignore that their so-called "evidence" of harm is unpersuasive and insufficient. Instead, they seek "waivers" of these regulations and ignore the fact that the relief is illegal because the Commission cannot waive a statutory requirement, and there are multiple requirements that prohibit the utility from switching a customer's supplier without express authorization from the customer to switch.

FE PA and CAUSE-PA also argue that the basis of their POR concern is that uncollectibles, both in percentage and in dollars per customer, are higher for EGSs than for default service, but provide no proof or evidence as to why this happens. More importantly, it appears that FE can't really say what level of uncollectible expense is caused by

[1] 66 Pa. C.S. § 2802(5) ("Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity").

customers who shop versus default service customers, because it has admitted that it merely allocates uncollectibles based on sales.[2]

These are retrospective comparisons to a PTC that is itself arbitrary and ill-suited as a benchmark for what is a reasonable or fair price in a market with a large number of offers of varying prices, durations and attributes, and neither FE PA nor CAUSE-PA offers any analysis of whether the products being compared were economically equivalent, what customers valued when they chose them, or whether customers received value from term certainty, renewable content, rewards, or other non-price attributes.

As demonstrated in the EGS Parties' Main brief, and herein, FE PA and CAUSE-PA's approach fails to pass muster. The real goal of each appears to be to cripple the competitive market – for their own different reasons, through proposals couched as preventing high prices – but which will remove the only check on prices – actual competition. This goal is belied by one critical fact, FE PA's admission that it would switch customers to default service under its proposed affirmative consent change, even if the product the customer was already signed on to, was at a price lower than the PTC.[3] So much for caring about affordability.

### A. FE PA's requirement of affirmative consent for a contract for which the customer has already consented is illegal and contrary to the purpose of the statute.

In its Main Brief, FE PA makes several assertions in support of its proposal to forcibly switch EGS customers to default service at the end of their contract -- regardless

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[2] EGS Parties' Main Brief at 20–21, citing Lacey Surrebuttal. See also RESA Main Brief at 58 (citing RESA St. No. 1-SR at 10-11) ("FE PA's uncollectible expense analyses are based upon accounting allocation methodologies that allocate generation-related uncollectible expense between default service and POR based upon billed revenues rather than actual supplier-specific write-offs.").

[3] EGS Parties' Main Brief, Appendix A ¶ 5, at 22 (citing Town Square Energy East, LLC Statement No. 1 (Miller) at 20:7-20 & n.13) (FirstEnergy "admitted it would move customers to default service even where the supplier's renewal offer is lower than the PTC and that customers desiring renewable supply could be forced to default service without consent").

of whether a customer has already consented to contract renewal -- if the supplier does not produce the required evidence from the customer that the customer has *once again* consented to the contract.

At the outset, FE PA contends that forcibly switching a customer in spite of the existence of a valid contract that provides for automatic renewals, is not anticompetitive and does not eliminate choice. Such arguments verge on the absurd. Consider that FE PA is a monopoly distribution company that has the ability, if it were permitted, to switch all customers from competitive suppliers to default service at will. That situation is a mere hair's breadth from FE PA's current contention that it should be allowed to create a new rule, contrary to the Commission's existing rules, that allows it to switch customers who don't consent a second or third or possibly fourth time to a contract for which they have already consented. Stated differently, to contend that such an arbitrary action was not anti-competitive is a huge move in the direction of forcing all customers onto default service. Indeed, when the Commission adopted the very regulation FE PA now asks it to abandon, it expressly rejected reversion to default service as a consequence of customer inaction under a competitive market framework.[4]

FE PA's contention that the Commission may waive its regulations that prohibit switching customers without consent is simply wrong. Granting a "waiver" of a statutory requirement is not permitted, and doing so is no mere rule tweak. The EGS Parties' Main Brief clearly establishes that 66 Pa. C.S. §§ 2806(a) and 2807(d)(1) vest the choice of supplier exclusively in the customer, and that the anti-slamming requirements of the statute independently forbids switching a customer's supplier absent direct oral confirmation or

[4] Rulemaking to Amend the Provisions of 52 Pa. Code § 54.5 Regarding Disclosure Statements for Residential and Small Business Customers and to Add § 54.10 Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers, Docket No. L-2014-2409385, Final-Omitted Rulemaking Order entered Apr. 3, 2014, at 38 ("Because the intent of the competitive market is to encourage customers to shop for their retail electricity supply, we do not believe it is appropriate for a customer to be reverted to default service should that customer fail to respond to either of the two EGS-provided notices.") (as cited in RESA Main Brief at 34).

written consent. It is axiomatic that regulation can be waived, but a statute cannot. Accordingly, even if the standard for waiving § 54.10(3) were satisfied on the facts (it was not), FE PA's proposal still runs into the independent statutory bar that FE PA and CAUSE-PA's waiver analysis never address.

In a similar vein, FE PA's argument that the customer's "choice" is preserved because non-response is treated as an election, elides the reality that the customer already made an affirmative choice when they signed a contract that auto-renews, and that contract does not require additional affirmation. The only actual choice the customer made was to be a customer of the supplier, CAUSE-PA's argument that signing a contract with a supplier should not be treated as a mere "gym membership" is inept and inverts the record; it is FE PA's proposal not the status quo that discards a customer's already-expressed consent and requires it to be repeated. [5]

As noted above, FE PA acknowledges (and the EGS Parties' Main Brief already notes in Appendix A ¶5) that it would move a customer to default service even where the supplier's renewal offer is priced below the PTC. More than any argument, that single admission is the best rebuttal available: if FE PA's proposal reverts even customers who are getting a better deal, it proves that the affirmative consent mechanism is not tailored to address the "affordability" harm that FE PA claims to be solving, and aptly demonstrates the "extensive evidence of harm" FE PA cites in an effort to distinguish PECO DSP VI and PPL DSP VI, does not and cannot establish that current contract renewal mechanism causes the alleged harm.[6]

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[5] CAUSE-PA Main Brief at p. 21.

[6] *Petition of PECO Energy Co. for Approval of Its Default Service Program for the Period from June 1, 2025 through May 31, 2029*, Docket No. P-2024-3046008, Opinion and Order entered Nov. 7, 2024, at 74-81 ("customers paying more for EGS service than the PTC does not necessarily prove that a harm is occurring, because customers could be making shopping decisions based on factors other than price, such as the specific product offered or the length of the contract"), reaffirmed, Opinion and Order entered Jan. 8, 2025, at 19-23 ("PECO DSP VI"); *Petition of PPL Elec. Utils. Corp. for Approval of Its Default Service Plan for the Period June 1, 2021 through May 31, 2025*, Docket No. P-

Both CAUSE-PA and FE PA assert that the test for allowing for changes to prevent competitive harm is the "reasonable alternative" test.[7] This "test" contends that to be permitted under the Competition Act, a restriction on competition requires both: (1) customer harm; and, (2) no reasonable alternative. FirstEnergy's proposals fail on both requirements.

First, as discussed above, in a competitive market, without price regulation and without evidence that customers do not receive value for their contracts, whatever the price, the record fails to show that charging a price that at any single moment in time is above the PTC causes harm. Second, the record aptly demonstrates that the existing two-notice, full-disclosure framework at 52 Pa. Code § 54.10, is itself a reasonable, less-restrictive alternative already in place. Also, neither FE PA nor CAUSE-PA has shown the existing process to be failing on its own terms. Further, neither CAUSE-PA nor FE PA explain why enhanced enforcement or disclosure under the existing framework was not considered before jumping to the draconian automatic reversion proposal that is one step away from abolishing the customer's ability to choose. The record shows FE PA never identified a defect in the current two-notice process.[8]

FE PA argues its proposal is not price regulation because, unlike Maryland's price cap, EGSs can charge anything they want — the only consequence is losing the customer absent affirmative consent. FE PA's slight-of-hand argument, leaves out any consideration of the fact that "losing the customer" as a consequence will eventually lead to market

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2020-3019356, Opinion and Order entered Dec. 17, 2020, at 2, 44-45, 92, 98 ("PPL DSP VI").

[7] *Retail Energy Supply Ass'n v. Pa. P.U.C.*, 185 A.3d 1206, 1228 (Pa. Cmwlth. 2018); *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania v. Pa. P.U.C.*, 120 A.3d 1087, 1103-04 (Pa. Cmwlth. 2015); see also *Petition of PECO Energy Co.*, Docket No. P-2024-3046008, Opinion and Order entered Jan. 8, 2025, at 21 (a restriction on competition may be approved only where "there is a harm associated with competition and no reasonable alternative exists").

[8] Town Square Energy East, LLC Statement No. 1 (Miller) at 18:15-20:17; 22:13-20 (existing regulations "clearly permitted and common," and a utility-specific waiver would "undermine statewide uniformity, create confusion, and fragment Pennsylvania's rules"); see also EGS Parties' Main Brief, Appendix A ¶ 4, at 21.

failure and appears to be the market consequence that FE PA is deliberately engineering: a structural mechanism that predictably shifts customers away from EGSs regardless of price is a *de facto* restraint on competitive supply, whatever label is attached to it. This is not a hypothetical concern: it is precisely what has already occurred in a comparable jurisdiction that adopted similar restrictions on shopping.[9]

It cannot be more clear - a single act of consent satisfies the statute. Any attempt to switch a customer without consent, as FE PA has proposed, is contrary to the same law.[10] Nothing in the Public Utility Code or Chapter 54 requires a customer to re-consent to a supplier relationship it has already, lawfully, agreed to continue via auto-renewal and FE PA's and CAUSE-PA's argument effectively asks the Commission to impose a new, unwritten consent requirement that exceeds what the statute and existing regulations demand. Accordingly, FE PA's request that it be permitted to forcibly switch customers to default service without consent be denied for all customers and in particular, as proposed here, for customers who do not provide an affirmative consent to continuing on a contract to which the customer has failed to provide documentation on ongoing affirmative consent to their chosen EGS.

### B. FE PA must be prohibited from switching customers on variable rates to default service, in violation of the Public Utility Code absent quarterly affirmative consent.

As with FE PA's effort to switch customers to default service at every contract renewal point, absent affirmative consent, FE PA also seeks authorization to forcibly switch customers on month to month or variable rate contracts to default service provided by

[9] See RESA Main Brief at 48-49 & Appendix A, Findings of Fact ¶¶ 25-28 (citing RESA St. No. 1 at 9-11, and Md. Pub. Serv. Comm'n, Electric Choice Monthly Enrollment Reports) (before enactment of Maryland Senate Bill 1, approximately 12.8% of residential customers statewide shopped for competitive supply; by January 2026 that figure had fallen to 0.3% statewide and to only 0.2% in FirstEnergy's own Potomac Edison service territory); see also id., Appendix A, Finding ¶ 28 (noting Maryland's subsequent repeal of portions of that legislation via House Bill 1532, the "Utility RELIEF Act," signed May 12, 2026, "in an effort to reenergize electric choice").
[10] 66 Pa. C.S. §§ 2806(a); 2807(d)(1).

FirstEnergy, absent the customer on the variable rate granting affirmative consent to the supplier, essentially agreeing to remain on the variable rate contract, every 3 months. Similarly to FE PA's efforts to switch all customers to default service upon contract renewal absent affirmative consent, FE also has turned its sights on variable rate contracts. The same arguments apply and the basic law is the same. The regulations, longstanding policy and the Code prohibit switching a customer without affirmative consent. FE PA has turned that concept on its head requiring affirmative consent to remain contractually obligated when the Code and the Commission's regulations require affirmative consent to become contractually obligated. There simply is no authorization for such a radical deviation from the law. Nor is such a radical departure necessary: the two-notice, full-disclosure framework already codified at 52 Pa. Code § 54.10, including the thirty-day advance notice of any subsequent price change required for month-to-month variable-rate products, is itself a less-restrictive alternative that FE PA never attempted to show was inadequate.[11]

The Code's requirement that customers affirmatively consent to being switched is not ambiguous, and is not restricted to low income customers.[12] The fact that neither of FE PA's "affirmative consent" proposals are limited to low-income customers, which voids the power of the PUC under the holding in *RESA* to "bend" the market and modify the requirements of choice to avoid harm to that group (low income) of customers, which the Court found were recognized in the Choice Act as special circumstances that allow the Commission more leeway in fashioning remedies. And similar to the argument above, FirstEnergy has failed utterly to demonstrate that the Commission's existing regulations

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[11] 52 Pa. Code § 54.10(2)(ii)(A)(I); See also, RESA Main Brief at 51-52 ("Nothing in the Competition Act or the Commission's regulations authorizes the Commission to require customers to repeatedly reaffirm a competitive supply decision they have already lawfully made.").

[12] *Retail Energy Supply Association v. Pa. P.U.C.*; 185 A.3d 1206, 1210 (Pa. Cmwlth. 2018).("the Choice Act permits PUC to effectively limit competition and choice for <u>low-income customers</u>, provided there are no reasonable alternatives to restricting competition, so that other important policy concerns of the General Assembly, such as access, affordability, and cost-effectiveness, may be served." Citing *CAUSEPA, 102 A.3d at 1104, 1106*; *see 66 Pa. C.S. § 2802(9)*")("*RESA*").

are failing to address whatever harm it believes is occurring to all customers. To the contrary, there is testimony that FE PA's proposal will cause harm to suppliers and their customers by increasing churn in the marketplace and by depriving customers and suppliers the benefit of their bargain. The unspoken premise for FE PA and CAUSE-PA's arguments is that customers cannot be trusted to make choices about the products and services they purchase and so that the right to choose, given unequivocally in the Code, should be disregarded in favor of giving the utility the right to choose what supplier provides service – in this case, itself. In effect, the syllogism presented by CAUSE-PA and FE PA is that it is the ability of customers to choose in the first instance that harms customers and they seek to diminish or eliminate that right based on a premise that remains unproven. This argument is a full on attack on the very basis of the *Electricity Generation Customer Choice and Competition Act*:

> The commission shall establish regulations to ensure that an electric distribution company does not change a customer's electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier.[13]

Nowhere does CAUSE-PA or FE PA present evidence demonstrating that customers are being slammed into contracts they did not agree-to by suppliers, that customers are not receiving copies of their contracts or the required two notices. Nor have FE PA or CAUSE-PA provided evidence that customers are failing to respond to such notices or that customers do not choose products based on the value those products provide. If CAUSE-PA or FE PA are intending to make such arguments, they have failed to support them and they have failed to overcome the obvious hinderance to such a "remedy" for their alleged harms – it is diametrically opposed to the law and the "solution" to their perceived problem is not available before the Commission.

[13] 66 Pa. C.S. § 2807(d)(1).

### C. FE PA must be prohibited from illegally changing its Purchase of Receivables program.

The Commission has been requiring POR since the expiration of the rate caps which opened choice to all customers in Pennsylvania.[14] Since that time, the Commission has been steadfast in its position that the Public Utility Code provides all of the authority the Commission needs to require POR programs.[15] This position and the rationale behind it, undercuts FE PA's contention that because the utilities cannot be forced to pay a supplier before the bill is collected from the customer,[16] that POR programs must only be offered on a voluntary basis. To the contrary, the Code may prohibit requiring "advance" payments, but that is not POR. In POR the utility is purchasing a legal obligation which is not prohibited.[17]

Even if the Code did prohibit requiring POR, which it does not, the voluntary nature of the program, as proposed by FE PA does not empower FE PA to provide the service in a discriminatory manner.[18] Provision of POR is inextricably and essentially intertwined with the billing service that FE PA is required to provide – a service for which EGSs pay and for which they are FE PA's customers.[19] There is no provision in the Code that would

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[14] *PPL Electric Utilities Corporation Retail Markets*; Docket No. M-2009-2104271 (Opinion and Order entered August 11, 2009, p. 1)("*PPL Order*").

[15] *PPL Order* at pp. 27:

> The Public Utility Code gives us the requisite authority regarding POR plans under our general authority (see, Title 66 Pa. C.S., Chapters 5 and 13) as well as the Competition Act to regulate the terms and conditions of these plans. In particular, based on several years' experience during the transition period, it is the Commission's judgment that a viable POR program is an essential element to the creation of a competitive market for generation in Pennsylvania, as envisioned by the Competition Act. 66 Pa. C.S. § 2802(2).

[16] 66 Pa. C.S. § 2807(c)(3); FE PA Main Brief at pp. 49-50.

[17] *PPL Order* at pp. 28.

[18] 66 Pa.C.S. § 1502.

[19] 66 Pa. C.S. § 2807(c). This case is distinguishable from *IGS v. Pa. PUC*, 343 A.3d 1152, 1161 (Pa. 2025) in which the Supreme Court found that billing for non-commodity products and services is not an essential utility service in performance of their duties under the code and therefore the anti-discrimination provisions of the Code, 66 Pa. C.S. § 1502, do not apply.

authorize discrimination simply because a program is offered voluntarily and FE PA offers no argument as to why it should be permitted to discriminate among suppliers based on the prices they charge and thus bar some suppliers from utilizing POR while allowing others to use it. Using sales price as the discriminating factor is inherently unreasonable because neither the Commission nor EDCs such as FE PA, are authorized to regulate prices that EGS's charge. Permitting one EGS to participate in POR and to bar another based on price is regulation – it creates winners and losers ( those able to participate and those not) based only on the prices charged. The absence of any evidence that POR itself causes the uncollectible expense FE PA attributes to it is fatal to the proposal.[20]

It should not be overlooked that FE PA's proposal for POR is premised on the notion that with POR, because supplier's receivables are purchased, they have little incentive to mitigate prices, a premise which is unproven in this record, but which also demonstrates that FE PA's vision for the POR proposal is focused sharply on the price an EGS charges, which in an open unregulated market, should be of no concern. There is no evidence that suppliers price products indiscriminately, or price does not matter to consumers, in fact there is no evidence that consumers don't consider price when signing a contract. The so-called evidence is limited to showing that some customers at some point in time during their contract end up paying more than the price to compare and an estimated quantification of the accumulated differences. There is no evidence that customers don't receive value for the products that they purchase, or that the Commission's requirements that suppliers provide specific information to customers regarding contract conditions and pricing are ineffective. Rather, FE PA promotes the drastic step of imposing a defacto price cap on what offers suppliers are permitted to offer or maintain in relationship to the Price to Compare ("PTC") which is itself an unstable target that does not necessarily reflect actual market prices. Neither FE PA nor CAUSE-PA offered any tangible evidence that POR causes any harm, thus exposing FE PA's intention of eliminating a substantial number of

[20] EGS Parties' Main Brief at 16-17 ("That is discrimination based solely on price, and it is even more egregious where the record contains no evidence that POR itself causes the alleged customer harm. . . . The absence of causation evidence is fatal.").

suppliers from the POR program, which in turn will significantly reduce the number offers available to customers and which will create a defacto cap on retail prices, set at the PTC, so that FE PA eventually will establish the price ceiling in its territory in direct contravention of the goals of the Competition Act that demand that customers have access to a functioning retail market.[21] FE PA's proposed *de facto* cap flies in the face of this fundamental concept. Put simply, the Commission may not accomplish indirectly, through POR eligibility, what the Competition Act prohibits it from doing directly: regulating the prices EGSs may charge.[22]

CAUSE-PA and FE PA argue that the clawback provision has not worked to solve the "problem" with uncollectibles but ignore that the clawback mechanism was specifically tailored to address the issue -- a subset of suppliers that appear to be the genesis of an outsized percentage of uncollectibles on the FE PA system. The clawback mechanism was designed to deal with the "problem" as described by FE PA and CAUSE-PA, but rather than seek to fix it, FE PA went right to exclusion from this critical billing program for any suppliers pricing over the price to compare. In doing so, CAUSE-PA ignores the requirement that the solutions begin with the least restrictive option and that you move to greater restriction only if there is no reasonable alternative. Neither CAUSE-PA nor FE PA suggest tweaking the clawback program nor did they argue that there is no reasonable alternative. Because of the substantial likelihood that FE PA's POR proposal will eliminate a large number of suppliers from the market, which for a variety of reasons may have product priced above the PTC, even if we don't agree that there should be a target or that the PTC is the appropriate target, it is incumbent on FE PA to at least examine the

[21] 66 Pa. C.S. § 2804(2) ("[T]he commission shall allow customers to choose among electric generation suppliers in a competitive generation market through direct access. Customers should be able to choose among alternatives such as firm and interruptible service, flexible pricing and alternate generation sources . . . . These alternatives may be provided by different electric generation suppliers.").

[22] See RESA Main Brief at 62 (citing 66 Pa. C.S. §§ 2802(14), 2806(a)) ("The Commission may not accomplish indirectly through POR eligibility what the Competition Act prohibits it from doing directly regulating competitive generation prices.").

alternatives in a meaningful way. FE PA did not. While FE PA's testimony discussed how the clawback worked and claimed it fell short, it does not examine at any depth, why the clawback could not be adjusted, or what the proposed restrictions on POR were the most reasonable alternative. The POR rule change is a blunt instrument with which to address a precise concern. FE PA's premise is that uncollectibles from POR are growing and becoming a problem, but it fails to recognize that a supplier that had no write offs and an excellent payment history could still be disqualified from POR for a single offer, say a 3-year fixed price product that for whatever reason suddenly is above the PTC. This bluntness is by design and appears to be intended to cause the most disruption to the market as possible. Nor did FE PA identify any less restrictive alternative to wholesale exclusion from POR, such as refined Clawback Provision screening thresholds or enhanced arrears reporting, despite the Commission's own recognition when it approved the Clawback Provision that future modifications could be proposed if experience demonstrated they were warranted.[23]

Finally, limiting POR to suppliers that price at or below the PTC requires EGS product offerings to essentially mimic the structure of utility default supply service. In order to ensure prices are at or below the PTC, EGS would need to procure power in the wholesale market for the same contract lengths as default supply procurements, pass through certain wholesale market costs, adjust prices semi-annually, etc. The end result is

[23] *See Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of Their Default Service Programs*, Docket Nos. P-2021-3030012 et al., Recommended Decision, adopted by Opinion and Order entered Aug. 4, 2022, at 85-86 (continuing the Clawback Provision while recognizing "future modifications could be proposed if experience demonstrated they were warranted"); RESA Main Brief at 59-61 (citing PECO DSP VI Order at 75-76); see also RESA Main Brief at 61-62 (identifying alternatives including "preserving and improving the existing POR framework, enhancements to utility billing systems, supplier consolidated billing, outsourced billing arrangements, alternative default service providers, unbundling of default service functions, and other market-design enhancements").

to inhibit EGS product innovation and limit customer choice to a homogenous product that reflects only the default supply procurement and not a vibrant competitive market.

## II. CONCLUSION

The fundamental premise of electricity competition is that the choice of who supplies their electricity should reside with the customer and not the utility. The Code does not establish requirements for the prices offered, only that suppliers supply the energy at the agreed-to price. In this proceeding, FE PA, CAUSE-PA and OCA are advocating that a customer's right to choose be subject to a requirement that the price be at a level specified by the utility and that contract renewal, be subject to terms dictated by the utility. FE PA's efforts in this case are a blatant attempt by the utility to insert itself into the relationship between a customer and its supplier and to take control of that relationship in ways clearly prohibited by the Code – by introducing new requirements on contract renewals and by setting the price at which customers may purchase the energy by regulating what suppliers have access to POR.

This is not the first time that utilities have tried to introduce their will on what customers in a competitive market are permitted to do, and it will probably not be the last. Nonetheless, the EGS Parties respectfully request that the Commission rebuff this overt attempt to control the market and reject FE PA's proposals as addressed in this Reply Brief and in their Main Brief.

Respectfully submitted,

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