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August 31, 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 its Default Service Program for the Period From June 1, 2027 through May 31, 2031; Docket No. P-2026-3060298; **EXCEPTIONS 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 Exceptions of Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy ("EGS Parties") to the Recommended Decision issued on August 21, 2026 in the above-captioned matter. Copies of the Exceptions 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: Office of Special Assistants (via electronic mail – ra-OSA@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: August 31, 2026

Todd S. Stewart

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

EXCEPTIONS OF
SHIPLEY CHOICE LLC D/B/A SHIPLEY ENERGY
AND IGS ENERGY LLC D/B/A IGS ENERGY
TO RECOMMENDED DECISION ISSUED AUGUST 21, 2026

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DATED: August 31, 2026

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I. INTRODUCTION

Now Come, Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy (collectively, the "EGS Parties"), by and through their undersigned counsel, and, pursuant to 52 Pa. Code § 5.533, hereby submit these Exceptions to the Recommended Decision ("RD") of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon (collectively, the "ALJs"), issued August 21, 2026. The RD adopts the arguments and reasoning of the handful of parties that joined the non-unanimous settlement in this proceeding and fails to meaningfully engage with the arguments raised by the majority of active parties that opposed it. In doing so, the RD commits legal error and overlooks substantial contrary record evidence that, properly weighed, compels a different result on each of the four issues addressed below.

The EGS Parties take exception on four independent grounds, each addressed separately as Exceptions Nos. 1 through 4 below:

First. FirstEnergy's proposal to revert customers to default service at the end of a fixed-term contract, absent the customer's affirmative consent to remain with the EGS, contravenes the statutory mandate that only the customer may choose — and change — their electric generation supplier, and interferes with existing contracts that provide for automatic renewal. The RD's view that a warning cures the statutory defect does not change this outcome. (RD at 199–208; see Exception No. 1, infra.).

Second. The proposal to require customers on variable-rate contracts to affirmatively re-consent every quarter, on pain of an involuntary supplier switch, is likewise contrary to the statutory mandate that only the customer holds the power to choose a supplier. (RD at 209–228; see Exception No. 2, infra.).

Third. The proposal to restrict access to Purchase of Receivables ("POR") — critical billing infrastructure — to suppliers who price at or below the Price to Compare ("PTC") is discriminatory under 66 Pa. C.S. § 1502 and constitutes indirect, price-based regulation of EGS conduct that the Code does not authorize. (RD at 229–234; see Exception No. 3, infra.).

Fourth. The RD approves removing the NITS charge from the default service rate and recovering it instead through a non-bypassable surcharge assessed on all default service customers. This discriminates against shopping customers relative to default-service customers and artificially deflates the PTC — the very benchmark the Utilities would have customers use to measure the value of competitive offers — while suppliers continue to bear NITS as an embedded cost they cannot avoid. (RD at 60-75; see Exception No. 4, infra.).

The RD would unravel the long-standing policies of customer choice codified in the Electric Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801 et seq. (the "Choice Act"), the Commission's Regulations and decades of settled policy, premised solely on a series of vague, unquantified claims of customer harm. Whatever protective purpose the Commission may pursue, it cannot do so by abating the plainly stated requirements of the Choice Act through adjudication of a single default-service program; a change of that magnitude, if warranted at all, belongs in a generic, statewide rulemaking with notice to all affected market participants — not in this proceeding. In addition to the broader legal and policy arguments below, the EGS Parties except specifically to Findings of Fact Nos. 62–68 and Conclusions of Law Nos. 35–46, as further identified within each Exception below.

II. STANDARD APPLICABLE TO EXCEPTIONS TO A RECOMMENDED DECISION

An RD is not a final order and has no legal effect unless and until the Commission acts. The Commission retains plenary authority to adopt, reject, or modify an ALJ's recommended decision in whole or in part, and is not bound by the ALJs' findings, conclusions, or credibility determinations. 66 Pa. C.S. § 332(h).

The Commission's interpretation of the Public Utility Code and its own regulations is entitled to deference and will not be reversed unless clearly erroneous, *Popowsky v. Pa. Pub. Util. Comm'n*, 706 A.2d 1197, 1203 (Pa. 1997); *Energy Conservation Council of Pa. v. Pa. Pub. Util. Comm'n*, 995 A.2d 465, 478 (Pa. Cmwlth. 2010), but that deference has never extended to permitting the Commission to relax or waive an unambiguous statutory command, let alone through adjudication of a single utility's default service plan. Where, as here, the RD's reasoning rests on an evidentiary record that does not support the inferential leaps described in Exceptions Nos. 1–4, the resulting order would not survive substantial-evidence review even under this deferential standard, and the Commission should correct the error now rather than on appeal.

III. ARGUMENT

1. <u>EXCEPTION NO. 1</u> - The RD Erred as a Matter of Law and Fact in Approving FirstEnergy's Proposal to Revert Customers to Default Service Absent Affirmative Consent to Remain With Their Chosen Supplier. (RD at 195–208; Conclusions of Law Nos. 41, 42, 43, 44, 45, 46; Findings of Fact Nos. 35, 36, 37).

A. The Customer's Statutory Right to Choose a Supplier Is Non-Waivable, and the RD Erred in Treating FirstEnergy's Request as an Ordinary Regulatory Waiver.

The customer's right to choose a supplier is a non-waivable statutory bar to the RD's analysis and outcome. Rather than confront the fact that the change is barred by statute, the RD analyzes it as a routine waiver request under the Commission's regulation-waiver authority, 52 Pa. Code § 5.43(a), and never squarely addresses the EGS Parties' point that 52 Pa. Code § 54.10(3) implements an independent, non-waivable statutory mandate — 66 Pa. C.S. §§ 2806(a) and 2807(d)(1) — that only the customer may choose or consent to change its electric generation supplier. A regulation may be waived under § 5.43(a); a statute may not. Characterizing the waiver as "narrow" and "temporary" does not answer that threshold legal defect. (Main Brief at 6–7; Reply Brief at 4–5.).

The Commission's own regulations recognize a limit on what § 5.43(a) reaches: the Commission may waive procedural defects, such as the identification requirements of § 5.533 itself, only where doing so "do[es] not affect the substantive rights of the party." *Info Connections, Inc. v. Pa. Pub. Util. Comm'n*, 630 A.2d 498 (Pa. Cmwlth. 1993). If a substantive-rights limit constrains the Commission's own waiver of its procedural rules, *a fortiori* the Commission cannot use the same waiver mechanism to relax a substantive statutory entitlement conferred directly on ratepayers by §§ 2806(a) and 2807(d)(1). This reading is reinforced by ordinary statutory construction: where the General Assembly speaks in mandatory terms – "the Commission shall establish regulations to ensure that an electric distribution company does not change a customer's electric generation supplier without direct oral confirmation or written evidence of a customer's consent," 66 Pa. C.S. § 2807(d)(1)), an implementing regulation cannot be read to authorize an agency-approved exception unless the statute itself provides for one. The Choice Act does not contain any such exception.[1] The RD erred in accepting the argument that the Commission can ignore a statute that is directly on point by merely waiving a regulation enacted pursuant to that statute -which it cannot do – and in so doing committed reversable legal error.

B. The RD's "Customer Was Warned" Rationale Does Not Cure the Statutory Violation.

The RD concludes that reverting customers to default service at contract's end does not contravene customer choice because the customer will be told, in the original contract and in expiration notices, that inaction will now result in reversion to default service rather than automatic renewal — framing the change as a consequence of inaction rather than a switch made without notice. (RD at 196–197.) That reasoning is flawed: nothing in the Code excuses denying a customer a statutory right on the ground that the customer was told the right was being taken away. Switching a customer based on silence, as proposed here, is not equivalent to declining to switch a customer, based on the same silence, when that customer has already affirmatively agreed to remain with a supplier until the customer chooses otherwise. The former extinguishes a choice the customer already made; the latter honors it.

Put simply, the RD treats advance notice of an impending switch as though it were the customer's consent to that switch. It is not. Notice that a right is about to be taken away is not the exercise of that right, and it is not a substitute for the affirmative choice the

[1] 1 Pa. C.S. § 1921(b) (where the words of a statute are clear, they are not to be disregarded under the pretext of pursuing its spirit); 1 Pa. C.S. § 1922(1) (the General Assembly does not intend a result that renders statutory language mere surplusage).

Code requires. The statute does not ask whether the customer was informed; it asks whether the customer chose.

C. The RD's Harm Finding Rests on Aggregate, Retrospective Data and Identifies No Causal Link Between That Harm and the Chosen Mechanism.

The RD's finding of "harm" rests on aggregate, retrospective PTC comparisons — $888 million in above-PTC costs since 2017 — without ever finding, because no party offered evidence on the point, that this harm results from a defect in the existing two-notice disclosure framework, as opposed to customers making informed but possibly not price-optimal choices, valuing non-price attributes of their EGS product, or receiving adequate but unheeded disclosures. The EGS Parties' briefs identified precisely this evidentiary gap, and the RD does not close it; it substitutes the size of the aggregate figure for a finding of causation. (Main Brief at 9–11, 19–20; Reply Brief at 4–5; RD at 198–199.) Under settled review principles, a Commission order must rest on record evidence, not inference stacked on an unproven premise; an order that substitutes the magnitude of an asserted harm for proof that the challenged practice caused the alleged harm will not satisfy the substantial-evidence standard that ultimately governs judicial review.[2]

D. The Proposal Is Not Narrowly Tailored to the Harm Identified and Is Fatally Overbroad.

The RD's own factual finding undercuts the tailoring required of any measure that departs from the statutory default. The RD accepts — and declines to treat as a fault — that customers will be reverted to default service even where their EGS renewal offer is priced below the PTC. (RD at 199.) That finding is in tension with the RD's own characterization of the proposal as a "narrowly tailored" response to an affordability harm: a measure that operates regardless of whether the customer is actually paying more sweeps well past the harm it purports to address. This is precisely the overbreadth argument raised in the EGS Parties' briefs. (Main Brief at 11; Reply Brief at 3–4.)

[2] *PECO Energy Co. v. Pa. P.U.C.*, 568 Pa. 39, 791 A.2d at 1160 (Pa. 2002).

2. <u>EXCEPTION NO. 2</u> - The RD Erred in Approving FirstEnergy's Proposal to Require Quarterly Re-Affirmation From Customers on Variable-Rate Contracts, on Pain of an Involuntary Supplier Switch. (RD at 208–209; Conclusions of Law Nos. 41, 42, 43, 44, 45, 46; Findings of Fact Nos. 35, 36, 37).

The ALJs found FirstEnergy a proper party to seek waiver of § 54.10(3) because it is directly affected by the current renewal protocol (citing higher uncollectibles, terminations, and complaints); found the waiver "narrow" and "temporary" (limited to new contracts entered after June 1, 2027, and expiring with DSP VII); and rejected the argument that a statewide rulemaking is required. (RD at 195–197, applied to the quarterly-consent proposal at RD 208–209.) For the reasons set out in Exception No. 1.A, supra, the threshold defect — treating a non-waivable statutory mandate as subject to regulatory waiver — infects this finding just as it infects the reversion-to-default finding, and the EGS Parties incorporate Exception No. 1.A by reference.

A. No Independent Evidentiary Showing Supports This Specific Measure.

The RD supports quarterly affirmation with the same $888 million aggregate figure used for Exception No. 1, without any separate showing that the existing 30-day price-change notice under 52 Pa. Code § 54.10(2)(ii)(A)(I) is failing variable-rate customers specifically. The EGS Parties argued that this less-restrictive, already-existing alternative was never shown to be inadequate, and the RD's analysis does not identify record evidence directed at that alternative's sufficiency. (Main Brief at 12–13; RD at 208–209.)

B. The RD Does Not Address the EGS Parties' "Single Consent" Statutory Argument.

The EGS Parties argued that 66 Pa. C.S. §§ 2806(a) and 2807(d)(1) require only one act of customer consent to establish and maintain a supplier relationship, and that a recurring re-consent obligation has no textual basis in the Code. The RD's finding that the requirement merely "supplement[s]" existing regulation does not engage with this statutory argument at all. (Reply Brief at 7–9; RD at 208.) <u>Susquehanna Area Reg'l Airport Auth. v. Pa. PUC, 911 A.2d 612, 623, 2006 Pa. Commw. LEXIS 618, *29 (2006)</u>, citing *Atcovitz v.*

Gulph Mills Tennis Club, Inc., 571 Pa. 580, 589, 812 A.2d 1218, 1223 (2002), ("inclusion of a specific matter in a statute implies the exclusion of other matters.") The same principle applies here, there is no authority anywhere in the Code allowing a utility, under any circumstances to change a customer's supplier, and there are two places where utilities are specifically prohibited from changing a customer's supplier without affirmative consent, the Commission has no authority to waive the stated requirements. A customer who has consented to be a customer of a supplier remains that supplier's customer until the customer chooses otherwise. Likewise, the statute does not say that customers get to choose only if they choose a price below the price to compare, or only if they keep saying yes after already agreeing once. Rather, the statute unambiguously says the customer must affirmatively choose and only once.

C. The RD Does Not Address Unrebutted Churn and Disparate-Impact Evidence.

The RD does not discuss the unrebutted testimony that recurring re-affirmation increases supplier costs, which are passed through to customers, and risks reverting customers who made a deliberate, informed choice to remain on a variable-rate product but simply did not respond to a quarterly attestation — a result difficult to square with the customer-choice rationale the RD invokes elsewhere in the same section. (Main Brief at 13, citing Town Square St. 1 at 18:5–10; RD at 208–209.)

3. <u>EXCEPTION NO. 3</u> - The RD Erred in Approving FirstEnergy's Proposal to Restrict Access to POR to Suppliers That Price at or Below the PTC. (RD at 227–229; Conclusions of Law No. 42; Findings of Fact Nos. 73, 92, 101, 102, 104, 105, 106, 107).

A. Characterizing POR as "Voluntary" Does Not Answer the Discrimination and Indirect-Rate-Regulation Theories the EGS Parties Actually Raised.

The RD treats POR's voluntary character as sufficient to dispose of the EGS Parties' objections. (RD at 227.) But the EGS Parties' argument was never that POR must be offered — it was that offering POR to some suppliers while denying it to others based solely on the supplier's price is unreasonable discrimination under 66 Pa. C.S. § 1502, and constitutes indirect rate regulation of EGS pricing that neither the Commission nor FirstEnergy has authority to impose. The RD does not confront either theory on its own terms. (Main Brief at 15–17; Reply Brief at 10–11.) Section 1502 prohibits utilities from discriminating between similarly situated customers or entities, 66 Pa. C.S. § 1502. However, here, unlike the IGS case, the service – POR – is being provided by the utility to customer EGSs.[3] What this means is that FirstEnergy is proposing that it be able to discriminate as between suppliers based on the offered retail price compared to the PTC, noting that the PTC has never been recognized in statute as a mandatory benchmark for evaluating the worthiness of an EGS price. Instead, the Act, requires that there be a multitude of offerings and prices. 66 Pa. C.S. § 2804. The net-net of the application of the law to FirstEnergy's proposal and the RD's merely facial review of its argument is that there is no authority in the Code to discriminate as between two groups of suppliers, which violates Section 1502, but even more important, discrimination on price alone, contradicts the Commission's statutory inability to regulate the rates of EGSs. The RD concludes, contrary to previous Commission decisions, that POR is voluntary on the part of the EDC. First, the Commission has imposed a duty on EDCs to provide POR, and has held that POR is not the prohibited requirement under 66 Pa. C.S. § 2807(c)(3) that utilities be required to "forward payment to entities providing services to customers, and on whose behalf the electric distribution company is billing those customers before the electric distribution company has received payment for those services from customers." Instead, the Company is purchasing a receivable from the EGS, which gives the utility the right to recover that receivable from the customer, but the utility is not simply forwarding payment to suppliers as customers are billed.[4] Second, because the Commission has required EDCs to provide POR, it is a duty that the EDC is required to fulfill. It is clear that in this case, Section 1502

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[3] *Interstate Gas Supply, Inc. v. PUC*, 343 A.3d 1152 (Pa. September 25, 2025).

[4] *Establishment of Interim Guidelines for Purchase of Receivables (POR) Programs*, Docket No. M-2008-2068982 and I-00040103F0002, (Order entered December 19, 2008 at 4-5 and 27).

does apply and does prohibit discrimination against suppliers premised on a regulatory ability that the Commission does not have.

B. The RD Treats Correlation Between Shopping Accounts and Higher Uncollectibles as Proof of Causation.

The RD's finding that POR-related uncollectible rates ran 22–56% higher, and $23–$38 versus $8–$15 per customer, establishes a correlation between shopping accounts and higher uncollectibles — it does not establish that above-PTC pricing causes that outcome, as opposed to other factors. (RD at 227.) The EGS Parties' briefs identified that FirstEnergy's own uncollectible-allocation methodology allocates by billed revenue rather than by supplier-specific write-offs — a methodological gap the RD does not address. (Main Brief at 17–19; Reply Brief at 11–12 n.20.)

C. The RD Fails to Consider the Less-Restrictive Alternative of Refining the Existing Clawback Mechanism.

The RD does not explain why refining the existing clawback mechanism — which the Commission itself recognized, in the RD, could be modified "if experience demonstrated [it was] warranted" — would not address the same uncollectible-expense concern without excluding suppliers wholesale based on price. This is the same "reasonable alternative" showing the RD required, and found satisfied, for Exception No. 1, but conspicuously does not require here. (Reply Brief at 12–13; RD at 227–229).

4. <u>EXCEPTION NO. 4</u> - The RD Erred in Approving FirstEnergy's Proposal to Remove the NITS Charge From the Default Service Rate and Recover It Instead Through a Non-Bypassable Surcharge. (RD at 60-74; Findings of Fact Nos. 10, 13, 14, 15, 21, 23, 24.; Conclusions of Law, Nos. 15, 16, 17, 27, 28, 29.).

A. Removing NITS From the Default Service Rate While Suppliers Continue to Bear It Is Unreasonable Discrimination Under 66 Pa. C.S. § 1502.

FirstEnergy argues elsewhere in this proceeding that some shopping customers pay more than the PTC and that this justifies new restrictions on customer choice, see Exceptions Nos. 1–3, supra, while simultaneously proposing a change that artificially reduces the PTC itself by removing one of its major price components – transmission costs known as NITS. Suppliers have no comparable ability to remove NITS from their own cost of service; they must recover the cost in their retail rate. The result is that default service customers and shopping customers are treated differently with respect to an embedded, non-avoidable cost of serving load — the definition of the kind of undue and unreasonable preference or disadvantage 66 Pa. C.S. § 1502 is designed to prevent.

Nothing in the Code relaxes the Section 1502 nondiscrimination standard merely because the classification arises from a change in cost-recovery treatment rather than a facially discriminatory tariff term. It is the effect on similarly situated customers, not the label the Utility gives the mechanism, that controls the analysis. Here the utility proposes to extract a cost that has heretofore been embedded in its default service rate, and instead to agree to pay for the NITS charges and then recover the cost from default service customers through a non-bypassable surcharge. The premise is that doing so will reduce the risk and/or incidence of wholesale suppliers including risk premiums in their bid prices to account for expected rises in Network Transmission (NITS) charges. Stated differently, FirstEnergy has proposed to advantage one class of its own captive distribution customers – those who take default service - over another – those who shop -- when both classes impose the same cost on the system and both classes face the same risk of rising NITS charges. This different treatment for default service customers is a blatant violation of the prohibition in Section 1502, or unwarranted discrimination. 66 Pa. C.S. § 1502. This lack of parity suggests a motive to disadvantage shopping customers and should not be permitted.

B. The Change Artificially Deflates the PTC, the Very Benchmark the Choice Act Uses to Measure the Value of a Competitive Offer.

The Commission and others have come (wrongly) to depend on the PTC functioning as a benchmark against which customers and the Commission can measure whether a competitive offer represents real value. Artificially lowering the PTC by excising a component of default-service cost, without a corresponding adjustment to how suppliers may recover that same cost, gives default service a price advantage that has nothing to do with underlying cost or efficiency, and everything to do with a change in accounting treatment applied to one side of the market only. Customers will lose access to competitive offers priced below a properly calculated PTC, because suppliers will not be able to sustain pricing at a loss against an artificially deflated benchmark for any meaningful length of time.

C. The RD Identifies No Record Finding That the Resulting Asymmetry Is Just, Reasonable, or Consistent With the Choice Act's Purpose.

Nowhere does the RD find that removing NITS from the default rate, standing alone and without a parallel adjustment for suppliers, is cost-based, revenue-neutral as between customer classes, or consistent with the Choice Act's declared policy of "protect[ing] the safety and reliability of the electric grid, and provid[ing] all retail electric customers ... the right to obtain direct access to a competitive market for the purchase of electric energy," 66 Pa. C.S. § 2802(3). Nor does the RD even evaluate the arguments raised by RESA and other parties and simply concludes that removing NITS responsibility from wholesale suppliers will benefit default service customers. In other words, the RD wholly fails to consider the impact of the artificial price advantage that the NITS proposal will provide the PTC and the harm to the competitive market. This is error, in failing to consider relevant arguments, much less failing to make any effort to address the problems the NITS proposal will cause.

IV. CONCLUSION

For the foregoing reasons, the EGS Parties respectfully request that the Commission sustain Exceptions Nos. 1 through 4, reject the Recommended Decision's approval of (i) reversion to default service absent affirmative customer consent, (ii) mandatory quarterly re-affirmation for variable-rate customers, (iii) POR eligibility restricted by supplier pricing, and (iv) removal of the NITS charge from the default service rate, and instead adopt the positions set forth in the EGS Parties, and other supplier-aligned parties' Main Briefs and Reply Briefs, or in the alternative remand this proceeding for further evidentiary development on each issue identified above.

Respectfully submitted,

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DATED: August 31, 2026