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August 31, 2026

VIA ELECTRONIC FILING
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 of June 1, 2027 to May 31, 2031
Docket No. P-2026-3060298

Dear Secretary Homsher:

Enclosed for filing please find Sunrise Airport Road LLC, Sunrise Forrester Road LLC, Sunrise Franklin Road LLC, Sunrise Harlansburg Road LLC, Sunrise Hendersonville Road LLC, Sunrise McCurdy Road LLC, Sunrise Perry Highway LLC, Sunrise Sandy Lake Greenville Road LLC, Sunrise Sandy Lake Polk Road LLC, and Sunrise Springfield Church Road LLC's (collectively, the "Customer-Generator Coalition" or the "CGC") Exceptions to the August 21, 2026, Recommended Decision issued in the above-referenced proceeding.

A copy has been served upon all parties of record in this proceeding in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Very truly yours,

STEVENS & LEE

Nicholas A. Stobbe

Enc.
cc: Deputy Chief Administrative Law Judge Mark A. Hoyer (*via Email*)
Administrative Law Judge Erin L. Gannon (*via Email)*
Office of Special Assistants (*via Email*)
Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

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

VIA E-MAIL

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Dated: August 31, 2026

Nicholas A. Stobbe

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

EXCEPTIONS OF SUNRISE AIRPORT ROAD LLC, SUNRISE FORRESTER ROAD LLC, SUNRISE FRANKLIN ROAD LLC, SUNRISE HARLANSBURG ROAD LLC, SUNRISE HENDERSONVILLE ROAD LLC, SUNRISE MCCURDY ROAD LLC, SUNRISE PERRY HIGHWAY LLC, SUNRISE SANDY LAKE GREENVILLE ROAD LLC, SUNRISE SANDY LAKE POLK ROAD LLC, AND SUNRISE SPRINGFIELD CHURCH ROAD LLC

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Dated: August 31, 2026

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I. INTRODUCTION

On August 21, 2026, Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon (collectively, the "ALJs") issued a Recommended Decision ("Recommended Decision" or "RD") which approved the Joint Petition for Non-Unanimous Settlement ("Non-Unanimous Settlement" or "Settlement") filed on July 2, 2026, by FirstEnergy Pennsylvania Electric Company ("FE PA" or "FirstEnergy"), the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Duquesne Light Company ("DLC"), and Walmart, Inc. ("Walmart").

The RD addressed, among other things, FirstEnergy's proposed modifications to the Maximum Registered Peak Load ("MRPL") construct. The Settlement was opposed by Dimension 1 PA, LLC ("Dimension"), the Joint Solar Advocates ("JSA"), the Retail Energy Supply Association ("RESA"), Constellation Energy Generation, LLC ("CEG") and Constellation NewEnergy, Inc. ("CNE") (collectively "Constellation"), Town Square Energy East, LLC ("Town Square") and WGL Energy Services, Inc. ("WGL"), Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy ("EGS Parties"), and the Customer Generator Coalition ("CGC"). Dimension, JSA, and CGC filed briefs in specific opposition to the MRPL proposal.

The RD recommended approval of the Settlement in its entirety because it purportedly "[met] the requirements of the Public Utility Code and the Pennsylvania Public Utility Commission's ("Commission") regulations, is supported by substantial evidence and is in the public interest."[1] The CGC respectfully disagrees. Specifically, the CGC submits that FirstEnergy's MRPL proposal is not supported by substantial evidence, is

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[1] *Petition of FirstEnergy Pennsylvania Electric Company for Approval of Its Default Service Program for the Period from June 1, 2027 to May 31, 2031*, p. 1, Docket No. P-2026-3060298 (RD issued Aug. 21, 2026).

contrary to the public interest, and violates statutory, regulatory, and public policy requirements.

First, the RD erroneously concluded that the primary justification for the MRPL proposal, customer-generator caused risk premiums, was supported by substantial evidence. It was not. Indeed, FirstEnergy, nor any settling party, could quantify the costs that distributed energy resources ("DER") like net-metering customer-generation allegedly create for other customers in the Price-To-Compare ("PTC") Rider class. Nor was FirstEnergy advised by any wholesale suppliers bidding on Fixed Price Full Requirements ("FPFR") contracts that risk premiums are baked into wholesale bids due to customer-generation. Nor did FirstEnergy ask any wholesale suppliers whether this was the case, despite a wholesale supplier being party to this proceeding. Rather than take these glaring evidentiary failures as determinative, the RD appears to have inverted the burden and placed it on the CGC to quantify the benefits of customer-generation.[2] If the CGC must quantify the benefits of customer-generation to validate its opposition to the MRPL proposal, then FirstEnergy must certainly quantify the costs allegedly created by customer-generation to support the proposal. It did not and the RD's findings otherwise are in error.

Second, the RD incorrectly found that FirstEnergy's projections of customer growth were supported by substantial evidence. They were not. Indeed, FirstEnergy's projections of customer growth are significantly overstated, thereby rendering FirstEnergy's projections of net-metering "true-up" payments inaccurate. One must look no further than historical data from FirstEnergy's own service territory to determine that the levels of prospective energization from customer-generators are much lower than what FirstEnergy projects. Lacking substantial evidence backing up FirstEnergy's projections, the RD approved the Settlement in error.

Third, FirstEnergy and OCA's positions related to customer-generator switching risk adopted by the RD are blatantly incorrect and defy simple economics and business

[2] RD at p. 22, Finding of Fact ("FoF") No. 56.

practice(s). There is no record evidence that customer-generators are shopping for competitive supply from Electric Generation Suppliers ("EGS"). If they were, it is conceivable that there would be some limited volumetric risk that wholesale suppliers would include in their FPFR contract bids. But customer-generators have no incentive to shop for competitive rates below the PTC because doing so would reduce compensation for excess generation. Conversely, EGSs do not enroll customer-generators in competitive shopping contracts, regardless of rate, because that would result in the EGS paying the customer-generator for electricity that the EGS does not need (it would also, at best, result in a break-even by the EGS). Furthermore, the record demonstrates that many suppliers **actively bar or restrict** customer-generators from enrolling in competitive supply service. The RD's adoption and agreement with the FirstEnergy and OCA's switching arguments is unsupported by the record and contravenes common sense.

Fourth, the RD failed to examine or account for the myriad of benefits provided by customer-generation. Absent any proven costs caused by customer-generation, these benefits are dispositive and require rejection of the MRPL proposal. Even if customer-generation does result in increased costs – which FirstEnergy has failed to prove – the benefits provided by customer-generation must be weighed against those costs. The RD's failure to do so is contrary to the public interest. Indeed, customer-generation: (1) can help address the resource adequacy crisis; (2) provides electric energy; (3) reduces FirstEnergy's capacity obligation; (4) reduces FirstEnergy's system losses; (5) reduces FirstEnergy's transmission costs; (6) reduces the market price of electricity; (7) provides health benefits; (8) provides clean energy; (9) provides needed investment in FirstEnergy's distribution system; and (10) helps the statewide and local economies, including local family-owned farms.

Fifth, the RD applied the incorrect standard for approving a Non-Unanimous Settlement. The RD relied heavily on unrelated cases filed by different utilities with different records.[3] The burden met by PPL Electric Utilities Corporation ("PPL") and UGI Utilities, Inc. – Electric Division ("UGI") in different cases cannot be imputed to FirstEnergy here merely because there are similar net-metering proposals. FirstEnergy's burden of proof is not carried on coattails. Holding otherwise would signal to all Electric Distribution Companies ("EDCs") that they no longer need to offer substantial evidence to support a proposal if a different EDC had a comparable proposal approved previously. This concern is particularly grave in the ratemaking context.

Sixth, the RD allows FirstEnergy to violate the Commission's regulations. Unlike UGI,[4] FirstEnergy boldly attempts to redefine a defined regulatory term in a one-off default service proceeding.[5] The Commission's regulations are clear. FirstEnergy seeks to sidestep and alter those regulations in a vacuum as a single utility in a single case. But that is not the correct procedure, and the Commission should not bend to the will of a single EDC to circumvent its rulemaking authority to pursue a poorly thought-out policy end. Further, to the extent that FirstEnergy made an earnest request for waiver of applicable regulations to institute the MRPL change, the RD appears to have ignored same.

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[3] The RD implies that the CGC in this proceeding is the same Customer Generator Coalition that participated in the recent PPL Electric Utilities Corporation ("PPL") rate case at Docket No. R-2025-3057164. That is incorrect. RD at pp. 112-113 ("In approving that settlement, the Commission considered and rejected <u>a variety of CGC arguments…")</u>

[4] *See 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 Nos. P-2024-3049343, et al.* (Opinion and Order entered Feb. 20, 2025) *aff'd sub nom., Penn Renewables, LLC v. Pa. Pub. Util. Comm'n*, 2026 WL 1466224 (Pa. Cmwlth. 2026) (hereinafter "*UGI*")

[5] FirstEnergy Exhibit No. DMY-6, Revised Page 25.

Last, the RD's approval of the MRPL proposal violates the clear intent of the Alternative Energy Portfolio Standards ("AEPS") Act[6] and the text of Act 129.[7] Section 5 of the AEPS Act requires that all customer-generators be compensated for their excess generation at the "full retail value," which includes generation, transmission, and distribution components. By forcing customers with systems over 100 kilowatts ("kW") into the HP Rider and compensating them at only the HP Rider rate, FirstEnergy is unlawfully substituting a wholesale rate for the full retail rate mandated by statute. This violates the law *and* frustrates the AEPS Act's purpose of promoting renewable energy development across the Commonwealth.[8] Similarly, the RD's approval of the MRPL proposal violates Act 129 which prohibits default service rates for small business customers from changing more frequently than quarterly. The MRPL proposal forces small business customers into service under the HP Rider, which fluctuates every five minutes based on wholesale Locational Marginal Price ("LMP"). This billing system cannot lawfully be applied to small business customers whose peak loads are below 25 kW. By approving the reclassification of these customers based on something other than realized actual peak demand, the RD violates Act 129.

Accordingly, the CGC submits the following Exceptions to preserve its legal and factual objections to the RD and to ensure that the Commission's review is performed consistent with applicable law and supported by substantial record evidence. Should the Commission adopt the RD, the CGC expressly reserves each of the issues raised herein, and in its briefs, for purposes of further administrative and appellate review.

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[6] 73 Pa.C.S. § 1648.5(a)(3).

[7] 66 Pa.C.S. § 2807(e)(7).

[8] *Dauphin Cnty. Indus. Dev. Auth. v. Pennsylvania Pub. Util. Comm'n*, 123 A.3d 1124, 1131 (Pa. Cmwlth. 2015).

II. LEGAL STANDARDS GOVERNING REVIEW OF THE RD AND NON-UNANIMOUS SETTLEMENT

The Commission's review of the RD is not limited to determining whether the Settlement reflects compromise among the settling parties. Even so, here, there is no compromise with respect to the MRPL proposal. The settling parties – representing a small minority of participants in this proceeding – agreed that FirstEnergy's MRPL proposal be approved without modification. However, the Settlement was actively opposed by more parties than supported it.

The RD correctly explains that the "Commission" applies the same standards [to a non-unanimous settlement] as those for deciding a fully contested case."[9] The Commission must also determine whether the proposed terms of a Non-Unanimous Settlement are in the public interest, supported by substantial evidence, just and reasonable, and conform to the Public Utility Code, the Commission's regulations, and the Commission's orders.[10] FirstEnergy's Settlement fails this standard.

III. EXCEPTIONS

A. Exception No. 1 – The RD Erroneously Concluded that the MRPL Provisions in the Non-Unanimous Settlement are Supported by Substantial Evidence. (RD at pp. 96-114)

The RD focuses on three (3) purely hypothetical and unproven allegations to justify approval of FirstEnergy's MRPL proposal. First, the RD accepts the proposition that customer-generation results in additional risk premiums built into wholesale suppliers bids. Second, the RD concludes that the projected growth of customer-generation will allegedly

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[9] RD at p. 8.

[10] See *Pa. PUC v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (*citing Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996)); *Popowsky v. Pa. PUC*, 805 A.2d 637 (Pa. Cmwlth. 2002); *Pa. PUC v. C. S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991); *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825 (1972)

increase "true-up" expenses borne by PTC Rider customers. Last, the RD mistakenly assumes that large net-metering customers have a propensity to shop for competitive electric supply, thereby increasing volumetric risk for wholesale suppliers.

These positions fail under the most basic critical analysis. The RD did not undertake a fulsome review of the record in this proceeding to stress-test FirstEnergy's reasoning on these three points. Had it, the conclusion would be unavoidable: no settling party, let alone FirstEnergy, presented substantial evidence to support the justifications for the MRPL proposal. The settling parties' failure to meet this preliminary evidentiary burden – and FirstEnergy's broader failure to carry its burden of proof[11] – mandates rejection of the Non-Unanimous Settlement and modification of the RD.

As explained in the CGC's Briefs, the MRPL proposal was scaffolded on the non-existent evidentiary assumption that inclusion of net-metering generation in the PTC Rider class would increase costs for others in the class. There is no competent record evidence to suggest this has or will occur. The principle underpinning FirstEnergy's MRPL proposal is entirely theoretical. Underscoring this failure, FirstEnergy does not address the "substantial evidence" standard in either of its briefs beyond pointing to the contested Non-Unanimous Settlement reached in *PPL Electric.*[12] The entirety of FirstEnergy's "substantial evidence" discussion is reproduced below:

> Walmart's witness Steven Chriss testified regarding the importance of customer-generator compensation and referenced this provision of the PPL Electric settlement.[] 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.[] <u>The "reasonable compromise" implementing a portion of the PPL Electric settlement is clearly supported by substantial evidence and the Commission</u>

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[11] *See* 66 Pa.C.S. § 332(a); RD at p. 6.

[12] *See* FirstEnergy RB, p. 30.

should therefore approve the Settlement's grandfathering provision.[13]

Rather than attempt to square its MRPL proposal with record support, FirstEnergy proffered a single conclusory reference to a different case involving an entirely different record. Not only that, FirstEnergy branded Walmart as a "solar developer"[14] to bolster support for the Non-Unanimous Settlement's MRPL proposal.[15] However, there is no record evidence to suggest that Walmart is actively developing solar within FirstEnergy service territory.[16] The RD accepted FirstEnergy's faulty reasoning without addressing the considerable evidence that contradicts FirstEnergy's position.

The RD correctly explained that "in reviewing a non-unanimous settlement, the Commission applies the same standards as those for deciding a fully contested case.[] Accordingly, substantial evidence consistent with statutory requirements *must support the proposed settlement*.[17] However, the RD abandoned this statutory requirement in its failure to seriously examine and address whether FirstEnergy's MRPL proposal was supported by substantial evidence. Rather, it merely pointed to a few previous decisions by the

[13] *Id.*

[14] FirstEnergy RB, p. 35.

[15] The CGC notes that, while a signatory to the Non-Unanimous Settlement, Walmart did not submit a Statement in Support of the Non-Unanimous Settlement.

[16] *See* Walmart St. No. 1, p. 7. Walmart's solar considerations are limited to a "goal" to bring 10 gigawatts ("GW") of new clean energy projects online by 2030, including 1 GW of "new onsite solar plus storage." Walmart does not contend, nor is there record evidence to suggest, that it has contemplated acting as a "solar developer" in FirstEnergy service territory.

[17] RD at pp. 8-9.

Commission and the Commonwealth Court of Pennsylvania.[18] Putting aside whether those decisions are consistent with applicable law – CGC submits they are not – those decisions have no bearing on whether FirstEnergy presented substantial evidence sufficient to carry its evidentiary burden here.

i. There is no Evidence that Customer-Generation Affects Risk Premiums in FirstEnergy Territory (RD FoF No. 50)

The record contains no support for the proposition that customer-generation increases risk premiums for default supply procurement. FirstEnergy admitted that it has not been advised by wholesale suppliers that risk premiums have been or will be added because of net-metered customer-generation.[19] FirstEnergy admitted that it has not asked wholesale bidders whether they have or will, despite wholesale generators that bid on Fixed-Price Full Requirements ("FPFR") contracts being party to this case.[20] FirstEnergy admitted that it did not and cannot quantify the alleged risk premiums.[21] FirstEnergy admitted that it cannot predict changes to the PTC.[22]

The RD did not address these multiple shortcomings endemic to FirstEnergy's MRPL proposal when evaluating whether it was supported "substantial evidence." Instead, without any substantive analysis of the body of evidence that contradicted FirstEnergy's "risk premium" assertion, the RD concluded that risk premiums would affect small

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[18] RD at pp. 112-113*; See also UGI*; *Pa. Pub. Util. Comm'n v. Citizens' Elec. Co. of Lewisburg, Pa.*, Docket Nos. R-2025-3054394, *et al*. (Opinion and Order entered Jan. 15, 2026); *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corp*., Docket R-2025-3057164 (Opinion and Order entered June 11, 2026) (hereinafter, "*PPL*").

[19] CGC St. No. 1, p. 11, lines 18-20; CGC Exhibit No. JAH-8.

[20] *See* Constellation Prehearing Memorandum, ¶ 5; Tr. at 86.

[21] CGC St. No. 1, p. 10, lines 18-19.

[22] CGC St. No. 1, p. 8, lines 15-19; CGC Exhibit No. JAH-5.

commercial customers.[23] Whether or not wholesale suppliers included risk premiums in their FPFR bids because of customer-generation in other utility territories (*i.e., UGI* or *PPL)* is irrelevant to the analysis in the present case. This case is confined by this record. The record is clear that there is no cognizable correlation between customer-generation and risk premiums in default service bids. Even if there was, FirstEnergy has made no meaningful attempt to substantiate its theory.[24] The burden of proof cannot be met here by simply referring to burdens that *UGI* and *PPL* may have carried previously. FirstEnergy must meet its own burden, with its own evidence, in its own case. FirstEnergy has failed to do so, and the RD ignores that reality.

ii. The RD's Projections of Customer Growth are Erroneous and Contrary to Record Evidence (RD FoF 40-46)

Another reason for the RD's approval of FirstEnergy's MRPL proposal – beyond relying on records and conclusions gleaned from other proceedings – is that growth of net-metering customer-generation will result in large "true-up" expenses borne by other PTC Rider customers.[25] The RD's conclusion(s) on this point are based entirely on FirstEnergy's growth projections that were proven to be faulty and exaggerated.

There are several thousand megawatts ("MW") of capacity in FirstEnergy's net-metering queue, comprised of approximately 1,555 net-metering applications.[26] However, the CGC's witness demonstrated why the number of applications in the queue is a

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[23] RD, FoF No. 50; RD at p. 114.

[24] The RD appears to hold the CGC to a different standard than FirstEnergy, who bears the burden of proof. The RD specifically notes that CGC has not quantified the benefits provided by customer-generation. RD at p. 22; FoF No. 56. If this is a reason to reject CGC's position, then the same standard should be applied to FirstEnergy, who failed to quantify any of its justifications for the MRPL proposal.

[25] RD at p. 114.

[26] CGC St. No. 1, p. 7.

misleading benchmark to project energization of customer-generation projects. The record reflects that only 18% of the projects in the queue have progressed to or beyond agreeing to pay for a Study Agreement that funds a feasibility study.[27] Less than 15% have signed a Construction Services Agreement ("CSA").[28] Of the 786 applications for net-metering solar facilities larger than 1MW FirstEnergy received in 2025:

(a) none have been energized;

(b) ninety-two (92) have paid the interconnection study;

(c) none have made facility upgrade payments; and

(d) 42 have been cancelled.[29]

More than 17-months passed between the opening of the 2025 application period and FirstEnergy providing this data. Yet not a single net-metering project submitted in 2025 had made significant progress to energization. Compounding this point, FirstEnergy does not have a deluge of net-metering customer-generation online in its service territory, despite the net-metering framework being around for more than 20-years.[30] FirstEnergy did not contextualize the rate of "applied for" projects that have been energized. Under both historical and relatively recent data, even a 10% energization rate (FirstEnergy's low projection) is unlikely and would buck historical trends. FirstEnergy does not explain why its projections materially differ from history, and the RD does not evaluate the issue. For these reasons, the CGC submits that the RD erred in finding that FirstEnergy offered substantial evidence in support of its customer-growth projections.

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[27] CGC St. No. 1-SR, p. 2; CGC Exhibit No. JAH-2SR.

[28] CGC St. No. 1-SR, pp. 7-8.

[29] CGC St. No. 1-SR, p. 2; CGC Exhibit No. JAH-2SR.

[30] *See generally* FirstEnergy Exhibit No. DMY-7 (Revised).

iii. The RD Mistakenly Concludes that Large Customer-Generators Shop for Electricity Supply (RD FoF Nos. 44, 50)

The last rationale that the RD points to for its approval of the MRPL proposal is that customer-generators are more "sophisticated" than other customers being served under the PTC Rider.[31] The inference both FirstEnergy and OCA made from this alleged "sophistication" is that customer-generators are more likely to shop for competitive electricity supply, thereby creating volumetric risk for wholesale suppliers that is reflected in an amorphous volumetric risk premium. However, there is no evidence whatsoever that this is occurring or will ever occur. To the contrary, the suggestion that large customer-generators shop for electricity supply is unsubstantiated by any record evidence and defies common sense.[32]

Large net-metering customers typically have little or no load.[33] Therefore, switching between default and competitive service would have no meaningful effect on a default supplier's delivery obligation. Further, customer-generators have no incentive to shop for competitive supply below the PTC. Doing so would reduce a customer-generator's rate for its excess generation. Conversely, an Electric Generation Supplier ("EGS") would not enroll a customer-generator in a rate higher than the PTC because doing so would result in the EGS paying the increased rate to the customer generator. Even if the competitive rate

[31] RD FoF Nos. 44, 50, pp. 19-21.

[32] This is made clear in OCA Exhibit Nos. BA-9 – BA-14, wherein several EGS contracts explicitly state that they are not responsible for paying a net-metering customer-generator for excess generation. Naturally, this raises the question: *why would a customer-generator sign up for competitive supply service with an EGS if the excess generation is not compensated for?*

[33] CGC St. No. 1-R, p. 4.

were lower than the PTC, and even if the customer-generator was inclined to enroll in that low rate, EGSs have no incentive to purchase electricity from customer-generators.[34]

On top of this clear deductive error, neither FirstEnergy or OCA know how many customer-generators shop for competitive supply.[35] Nor can FirstEnergy or OCA quantify the "switching risk premium" wholesale builders are allegedly building into their wholesale supply bids.[36]

Customer-generators are not shopping because it would cut against their financial interests. EGSs are not selling to customer-generators because it would cut against the EGSs' financial interests. "Sophistication," which remains undefined by FirstEnergy, OCA, and the RD, is a vague, arbitrary, and incorrect proxy for a customer's propensity to shop. There is no substantial evidence to suggest net-metering customers are shopping for competitive supply. The RD erred by failing to consider or ignoring this fact.

B. Exception No. 2 – The RD Erroneously Ignored the Array of Benefits Provided by Net-Metered Customer-Generation. (RD at p. 114)

The Commission's public interest determination requires a fulsome and independent analysis of each contested provision of the non-unanimous settlement.[37] Those provisions must be lawful, supported by substantial evidence, and in the public interest.[38] Conceivably, agreement by a significant portion of the parties may lend support

[34] Were this not the case, there would be no margin for the EGS at all.

[35] Tr. at 84; Tr. at 164.

[36] Neither has asked.

[37] *Pa. PUC v. Philadelphia Electric Co.*, 522 Pa. 338, 342-43, 561 A.2d 1224, 1226 (1989); *Pa. PUC v. Pa. Gas & Water Co.*, 492 Pa. 326, 337, 424 A.2d 1213, 1219 (1980), *cert. denied*, 454 U.S. 824, 102 S. Ct. 112, 70 L. Ed. 2d 97 (1981)).

[38] *See Pa. PUC v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (*citing Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996)); *Popowsky v. Pa. PUC*,

to those requirements, but is not sufficient to meet the standard in and of itself. Here, only six-out-of-seventeen parties were signatories to the non-unanimous settlement. Of those six signatories, only three submitted main briefs. Of those three, two briefed the merits of the MRPL proposal. Less than 12% of the parties to this proceeding were willing to argue that the public interest was served by approving the MRPL proposal. In fact, the Non-Unanimous Settlement is actively opposed by more parties than supported. Almost three (3) times the number of parties opposed the Non-Unanimous Settlement and briefed its merits than briefed in support of the Non-Unanimous Settlement. The CGC does not contend this is dispositive. But it is indicative of the Non-Unanimous Settlement's public interest failures.

The RD ignores the undisputed benefits provided by customer-generation under FirstEnergy's net-metering scheme. If FirstEnergy's MRPL proposal is approved, these benefits will be decreased or eliminated because existing projects were financed and constructed under the existing framework. Indeed, the RD does not grapple with any of benefits of customer-generation beyond a brief reference to CGC's direct testimony.[39] Failure to account for the benefits of customer-generation under the current scheme is a mistake that requires the Commission's review and correction.

i. Encouraging Customer-Generation will Help Address the Resource Adequacy Crisis

It is undisputed that Pennsylvania is facing a resource adequacy crisis.[40] Demand for electricity is growing at an unprecedented pace.[41] Various Electric Distribution

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805 A.2d 637 (Pa. Cmwlth. 2002); *Pa. PUC v. C. S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991); *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825 (1972).

[39] RD at p. 141.

[40] CGC MB at pp. 26-30.

[41] *Id.*, at p. 26.

Companies ("EDC") including FirstEnergy, PJM, the OCA, the Pennsylvania Governor, and the Commission itself have recognized this fact.[42] At the Evidentiary Hearing in this proceeding, FirstEnergy confirmed that less generation or decreased build-out of generation coupled will increased load may result in an overall capacity shortfall.[43] The MRPL proposal, if approved, would discourage continued buildout of customer-generation, thereby intensifying the already present crisis.[44] The RD fails to recognize, let alone evaluate, how discouraging new generation would be consistent with the public interest in light of the resource adequacy crisis. This failure is in error.

ii. Customer Generation Provides Electric Energy

The RD fails to recognize that approval of the MRPL proposal would kneecap the viability of customer-generation and reduce investor incentive to continue developing distributed energy resource ("DER") projects, which indisputably provide electric energy to the grid.[45] Approval of the MRPL proposal will reduce remuneration due to customer-generators,[46] thereby discouraging investment. Both FirstEnergy and the RD effectively contend that decreasing supply (in the face of increasing demand) will reduce prices. That theory defies economic reality. The RD wholly ignores this reality in error.

iii. Customer-Generation Reduces FirstEnergy's Capacity Obligation(s)

Both the CGC and JSA explained that customer-generation reduces FirstEnergy's capacity obligation, thereby reducing capacity costs.[47] In error, the RD failed to critically evaluate this concept.

[42] *Id.*, at pp. 26-28.

[43] *Id.*, at pp. 27-28; Tr. at 89.

[44] *Id.*, at pp. 28-29.

[45] CGC MB at p. 30.

[46] *Id.*; Tr. at 100-101.

[47] CGC MB at p. 30; *See also* JSA St. No. 1, p. 19.

iv. Customer-Generation Reduces System Losses

Customer-generation reduces system losses.[48] The natural extension of this fact is that reduction of customer-generation will *increase* system losses, thereby increasing costs for all FirstEnergy customers. Conversely, encouraging continued buildout of customer-generation under the existing paradigm will result in continued reduction of system losses, thereby reducing costs. The RD fails to consider this obvious benefit in error.

v. Customer-Generation Reduces Transmission Costs

The RD also failed to evaluate how customer-generation reduces transmission costs. The framework for this conclusion is simple:

[48] CGC MB at p. 31; CGC St. No. 1, p. 13; JSA St. No. 1, p. 51.

> (1) Net-metered excess generation coincident with the NSPL peak hours reduces aggregate net load for the applicable FirstEnergy transmission zone.
>
> (2) This lowers the NSPLs assigned to all retail customers in the zone for the following calendar year.
>
> (3) That lowers the zone's total NITS cost obligation for the following year.
>
> (4) That reduction lowers default service bid costs or, if FirstEnergy's NITS proposal is approved, lowers FirstEnergy's acquisition costs.
>
> (5) These lower costs then reduce the PTC Rider or HP Rider rate for the following year.[49]

In failing to evaluate how customer-generation substantively reduces transmission costs, the RD's approval of the MRPL proposal is directly contrary to the public interest because a reduction in customer-generation will *increase* transmission costs.

vi. Customer-Generation Reduces the Market Price for Electricity

Customer-generation reduces the market price for electricity, thereby reducing costs for all FirstEnergy customers.[50] Customer-generation has essentially no dispatch costs, meaning that PJM will dispatch electricity from customer-generation before other more expensive electricity. In turn, this reduces the market price for energy.[51] The RD does not

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[49] CGC MB at pp. 31-32; CGC St. No. 1, p. 13; JSA St. No. 1, p. 51.

[50] CGC MB at pp. 32-33.

[51] *Id.*; CGC St. No. 1, p. 13.

weigh this reduction against FirstEnergy's vague and unquantified allegations regarding customer-generation costs, thus, fails to credibly satisfy the public interest.

vii. Customer-Generation Provides Health Benefits

Under the MRPL proposal, customer-generation would be discouraged and existing facilities may no longer be viable. Clean customer-generation displaces fossil fuel derived electricity, thereby reducing criteria air pollutants associated with harmful health impacts.[52] A reduction or curtailment of customer-generation – which would occur if the MRPL proposal is approved – would therefore increase criteria air pollutants, which is directly adverse to the public interest. The RD ignored this fact.

viii. Customer-Generation Provides Clean, Decarbonized Energy

Customer-generation is critical to meeting the Commonwealth's decarbonization goals. As noted in Section III(B)(vii), *supra*, customer-generation reduces the need for burning fossil fuels, thereby reducing greenhouse gas emissions.[53] Furthermore, customer-generation supports a diverse generation portfolio, thereby creating a resilient and reliable grid. The RD's approval of the MRPL proposal does not consider this critical benefit, in contradiction of Pennsylvania's decarbonization and resiliency goals and the public interest.

ix. Customer-Generation Provides Investment into FirstEnergy's Distribution System

Customer-generation directly benefits FirstEnergy and its customers by providing necessary distribution upgrades as part of the interconnection process. The addition of large customer-generators can delay or address the need for FirstEnergy to pursue distribution upgrades which would otherwise be shouldered by FirstEnergy's other customers.[54] Furthermore, additional customer-generation connected to the distribution

[52] CGC MB at pp. 33-34; CGC St. No. 1, p. 14.

[53] *Id.*

[54] CGC MB at p. 35; CGC St. No. 1, p. 15.

system can reduce the need to build new transmission capacity.[55] The RD does not acknowledge nor evaluate this fact.

x. Customer-Generation Helps the State Economy and Local Farmers

As explained in the CGC's Main Brief, encouraging the continued development of customer-generation supports Pennsylvania's economy.[56] These benefits are not limited to DER developers. Indeed, investments in customer-generation keep locally owned farms viable.[57] The Commission has explained that "the future of Pennsylvania agriculture and the future of our energy system are increasingly indistinguishable."[58] Net-metered customer-generation supports both the energy system and agriculture. Indeed, one of the CGC's members constructed DER facilities that literally "keep [a] farm running."[59] That project – and all the CGC's members' projects (and presumably all the extremely limited projects currently energized in FirstEnergy service territory) – were financed and constructed under the current net-metering framework. If the Commission is to support local farms and DER infrastructure, it must reject the MRPL proposal. The RD erred by not considering this critical benefit as part of its public interest analysis.

C. Exception No. 3 – The RD Failed to Apply the Correct Legal Standard for Approval of a Non-Unanimous Settlement.

While the RD recites the correct framework for approval of the MRPL proposal, the analysis effectively treats the existence of compromise between a small minority of parties as sufficient to sustain and approve the contested MRPL provisions. This approach is

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55 *Id.*

56 CGC MB at pp. 35-37.

57 *Id.*; CGC St. No. 1-R, pp. 5-6.

58 *See PPL*, p. 198 (Opinion and Order entered June 11, 2026)

59 CGC St. No. 1-R, p. 5, fn. 10.

incompatible with the standards that the Commission must apply when evaluating the Non-Unanimous Settlement.

To approve the Non-Unanimous Settlement, the Commission is required to determine whether the resulting rates and rate classifications are just and reasonable, supported by substantial evidence, and consistent with applicable law and the Commission's regulations.[60] To meet this standard, the Commission's determination must be based on the record developed in this proceeding, not the records and conclusions reached in other unrelated cases involving different utilities, nor on the mere fact that six (6) out of the seventeen (17) participating parties believe the Settlement is appropriate.

The RD does not apply that standard to the Settlement's MRPL provisions. While the RD recognizes that the MRPL provisions are contested, it does not determine whether they satisfy the governing regulatory definition, whether the evidentiary record has been sufficiently developed to support the proposed rate treatment, or whether the MRPL rate reclassification is non-discriminatory.[61] Rather, it leans heavily on the Commission's treatment of *UGI* and *PPL's* comparable proposals. Those proposals, while admittedly similar to FirstEnergy's, were developed and approved under an entirely different evidentiary record involving different utilities, different service territories, and different customers. As such, the factual and legal conclusions in this proceeding should naturally vary, however slightly, from the conclusions reached in unrelated cases. The existence of a Non-Unanimous Settlement does not supplant the Commission's mandate to evaluate each individual case under the governing legal standards. Effectively, this case has been fully litigated. The RD does not meaningfully engage with the record as if it were, which is in error.

[60] 66 Pa.C.S. § 1301; RD at pp. 3-4.

[61] RD at pp. 112-117.

D. Exception No. 4 – The RD Erred by Approving the Non-Unanimous Settlement in Violation of the Commission's Regulations.

The RD greenlights FirstEnergy's request for an end-around of the Commission's regulations. As the RD correctly explains, "Maximum Registered Peak Load" is defined by the Commission's regulations.[62] The Commission's regulations define MRPL as "[t]he 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."[63] Critical to a reasonable reading of the regulation, PJM's PLC construct requires a demand-based metric to measure a particular customer's contribution to peak demand. The regulation does not permit the treatment of generation – *i.e.*, supply – as demand. There is nothing in the Commission's regulations, nor the PJM's PLC construct, that allows such practice.

Where regulatory language is clear, it must be applied according to its plain meaning and may not be expanded through interpretation or ill-thought-out policy considerations. The Statutory Construction Act explains that, when the words of a statute are clear and free from ambiguity, "the letter of it is not to be disregarded under the pretext of pursuing its spirit."[64] Demand is simply that. As is supply.[65] Equating the two as FirstEnergy attempts is untethered from any reasonable reading of the Commission's regulation.[66] FirstEnergy's

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[62] RD at p. 104; 52 Pa. Code § 54.182.

[63] 52 Pa. Code § 54.182.

[64] 1 Pa.C.S. § 1921(b).

[65] One need not look further than the Commission's own "Electric Terms Dictionary" for a simple definition of "demand" which contradicts FirstEnergy and the RD's conclusions. *See* https://www.puc.pa.gov/electricity/electric-terms-dictionary/#P.

[66] *W. Penn Power Co. v. Pa. PUC*, 615 A.2d 951 (Pa. Cmwlth. 1992) (citing Pennsylvania Public Utility Commission Rate Case Handbook, at 12-14) (defining "load"

MRPL definition is not a mere clarification of an ambiguous regulation. It is an adulteration and substitution of plain text.

FirstEnergy and the RD lean heavily on the last clause of the regulation to justify departure from the clear directive of same.[67] This reliance is misplaced. Ambiguity exists only "when there are at least two reasonable interpretations of the text under review."[68] FirstEnergy's MRPL proposal is not merely an interpretive cast of an unclear regulation. It is a substantive departure from the text of the regulation itself that fundamentally disregards the demand-based requirement as written. By attempting to include exportation of customer generation under the demand-based paradigm, FirstEnergy rewrites the regulation. Doing so in a single-utility DSP proceeding is not the appropriate vehicle to pursue this change. Moreover, approval of the MRPL proposal would signal to all EDCs that it is permissible to expand a clear regulatory definition to meet unjustified policy ends. The CGC respectfully submits that, for the Commission to allow this practice, is to allow individual EDCs to rewrite and revise regulations *vis-à-vis* their individual tariffs. The Commission's regulations and the Public Utility Code do not permit such a result.[69]

Further, the RD ignored that FirstEnergy's MRPL definition directly clashes with PJM's methodology incorporated into the regulation. The PJM PLC construct measures a load-serving entity's share of system peak demand based on customer load during the PJM

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as the sum of customer demand and "peak load" as the highest level of such demand over a defined period).

[67] FirstEnergy St. No. 1, p. 16, lines 13-16.

[68] *Warrantech Consumer Prods. Servs., Inc. v. Reliance Ins. Co. in Liquidation*, 96 A.3d 346, 354-55 (Pa. 2014).

[69] *See Phila. Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044, 1056 (Pa. Cmwlth. 2002) (an administrative agency may not disregard or waive governing legal requirements on the theory that doing so would advance policy objectives); *Aetna Casualty and Surety Insurance Co. v. Insurance Dep't.*, 638 A.2d 194 (Pa. 1994).

systems five (5) CP hours.[70] The PJM framework – and, by extension, the Commission's regulation – does not treat exported generation as demand. Nor does it permit generation to be substituted for load in determining the PLC. Pennsylvania law requires that tariff provisions conform to applicable statutes and regulations. Tariffs, though broad and controlling of a utility's rates, terms, and conditions of service, cannot be used as a lever to rewrite regulatory requirements.[71] FirstEnergy, nor the Commission, can individually rewrite the Commission's regulations in a one-off DSP proceeding to pursue a policy end. The RD fails to recognize this in error.

As explained above, FirstEnergy's burden of proof is not supplanted by the record in *UGI* or *PPL*. Alternatives to address FirstEnergy's speculative and unsupported affordability concerns were never evaluated by the Company.[72] FirstEnergy does not know where the excess generation from customer-generators goes once it enters the grid.[73] It is delivered to FirstEnergy's distribution customers agnostic of those customers' rate class(es). Because the excess generation can be used by any of FirstEnergy's customers,[74] and excess generation is not used to serve default service,[75] it is perplexing why FirstEnergy has not evaluated other tariff options, such as a rider, to recover true-up costs from all classes benefiting from net-metered excess generation. FirstEnergy had the

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[70] See PJM Manual 18: PJM Capacity Market, § (Capacity Obligation – Peak Load Contribution); PJM Manual 19: Load Forecasting and Analysis (describing calculation of coincident peak load); *see also* JSA St. No. 1, p. 15, lines 5-9.

[71] *See* 66 Pa.C.S. § 1301 (requiring utility rates and practices to be just and reasonable and in conformity with regulations of the Commission).

[72] *See* CGC St. No. 1-SR (Corrected), p. 4, lines 19-21, p. 7, lines 7-9, p. 8, lines 5-8.

[73] Tr. at 88-89.

[74] *See* JSA St. No. 1-S, p. 23, lines 3-4.

[75] FirstEnergy St. No. 1, p. 17, lines 11-14.

capability to evaluate this approach but has opted instead for the binary MRPL proposal. Certainly, evaluating the recovery of net-metered related true-up costs under a different mechanism could address FirstEnergy's unsupported and speculative subsidization concerns, while also addressing the boilerplate concerns recognized in the RD.

Furthermore, the Commission's regulations require that customers with peak load up to 25 kW have rates changed no more than quarterly.[76] The regulations also require an EDC like FirstEnergy to provide a single-rate option and display the customer's PTC on its monthly bills.[77] The PTC should equal the sum of all unbundled generation and transmission related charges for that month of service.[78] Customers receiving the PTC Rider rate properly receive this information. However, there is no evidence that FirstEnergy plans to provide the improperly re-classified HP Rider customers, those with MRPL greater than 100 kW (due to their generating system size), with this information. Furthermore, since the HP Rider rate is based on the hourly LMP, which cannot be determined in advance, FirstEnergy would not be able to provide a "single rate" option on HP Rider customer bills or provide a fulsome PTC, including all generation and transmission charges. As a result, FirstEnergy's proposal to classify customers based on the contrived MRPL, rather than demand, violates the regulatory requirements set forth in 52 Pa. Code 54.187, and reduces bill transparency and predictability for net-metering customer-generators.

While FirstEnergy did include a cursory request for a waiver, if necessary, of certain regulations in its filing, the RD did not evaluate the request in the context of the MRPL proposal. A Petition for Waiver is an *ad hoc* adjudicatory request for relief from the

[76] 52 Pa. Code § 54.187(h).

[77] 52 Pa. Code § 54.187(c).

[78] 52 Pa. Code § 54.182.

application of an existing regulation in a particular case in light of a specific set of circumstances that justify the relief.[79] As the Commission has explained:

> [w]aivers of Commission regulations are not liberally construed or lightly granted. Waivers are not granted implicitly or of unlimited duration. In reality, waivers are **narrowly crafted and generally temporary.**[80]

The RD does not grapple with this standard in the MRPL context. Indeed, it is not clear whether the RD even considered FirstEnergy's vague and unsupported waiver requests. In any event, the standard for waiver of the Commission's regulations relating to the MRPL proposal have not been met and the RD erred to the extent that it found otherwise.

E. Exception No. 5 – The RD Erred by Approving the Non-Unanimous Settlement in Violation of the Text and Intent of the AEPS Act.

FirstEnergy's MRPL proposal violates Section 5 of the AEPS Act which requires that customer-generators be compensated for excess generation at full retail value. Specifically, 73 Pa.C.S. § 1648.5 states that "[e]xcess generation from net-metered customer-generators shall receive *full retail value* for all energy produced on an annual basis." The statute does not define "full retail value," but in the net metering regulations,

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[79] *See generally Jim Rossi*, *Making Policy Through the Waiver of Regulations at the Federal Energy Regulatory Commission*, 45 Admin Law. Rev. 255, at pp. 259, 275-277 (1995).

[80] *See, e.g., Petition of Duquesne Light Company For Waiver and Suspension of Meter Testing Requirements Under 52 Pa. Code 57.20(e) and 57.21(f) For Deployed Legacy Meters*, Docket. No. P-2016-2525790 (Order Entered Dec. 22, 2016); *PGW 2014-2016 USECP*, Docket, No. M-2013-2366301 (Order entered Aug. 22, 2014) at 48, *citing Petition of Met-Ed for Waiver of 52 Pa. Code § 56.97,* Docket. No. P-2013-2384967 (Order entered Nov. 14, 2013) at 3; *Petition of Interstate Gas Supply, Inc., to Amend Natural Gas Supplier License and for Waiver of Commission Regulations*, Docket. No. P2021-3026755 (Order entered September 15, 2021). (Emphasis added).

the Commission explained that "[a]n EDC and DSP shall credit a customer-generator at the full retail kilowatt-hour rate, *which shall include generation, transmission and distribution charges*, for each kilowatt-hour produced…"[81] FirstEnergy's MRPL proposal blatantly violates both the statute and the regulations by compensating excess generation for certain customer-generators at the LMP, which is a wholesale rate.

Both the Commission and the Commonwealth Court have explicitly acknowledged that the purpose of the AEPS Act is to encourage the development and deployment of renewable energy sources, even if doing so does not result in the lowest possible rates.[82] To that end, the AEPS Act was amended in 2007 to provide for compensation of excess generation at full retail value, rather than the avoided cost of wholesale power.[83] In doing so, the legislature did not distinguish the compensation to be paid based on nameplate capacity size – instead, the provision utilizes the term "customer-generator," which was also amended to allow distributed generation systems up to 3,000 kW for non-residential customers.[84]

The RD errs by not applying the text of Section 5 of the AEPS correctly. The RD further errs by approving a proposal that cuts directly against the intent of the AEPS Act, which is:

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[81] 52 Pa. Code § 75.13(d).

[82] *See Dauphin Cnty. Indus. Dev. Auth. v. Pennsylvania Pub. Util. Comm'n,* 123 A.3d 1124, 1135 (Pa. Cmwlth. 2015) and *Hommrich v. Pennsylvania Pub. Utilities Comm'n,* 231 A.3d 1027, 1040 (Pa. Cmwlth. 2020), *aff'd sub nom. Hommrich v. Commonwealth*, 664 Pa. 567, 245 A.3d 637 (2021).

[83] *In Re Implementing of Act 35 of 2007*, Final Omitted Rulemaking Order, 103 Pa. P.U.C. 91 at 2 (July 2, 2008).

[84] 73 Pa.C.S. § 1648.2.

> […] to facilitate the research, development and deployment of small alternative energy resources by providing monthly credits consistent with the full *retail* value for the kilowatt-hours generated by the renewable resource. As such, this Commission believes that energy produced from a renewable resource up to the level of monthly energy usage by a customer-generator should include the fully bundled charges for generation, transmission and distribution service.[85]

Not only does the MRPL proposal fail to comply with a clear statutory directive, if approved, it will dampen the development of DER customer-generation projects at or larger than 100kW in FirstEnergy's service territory. The RD failed to evaluate how reducing or eliminating incentive for continued development of DER facilities squares with the blatant intent of the AEPS Act. Its failure to do so is in error and must be corrected by the Commission.

F. Exception No. 6 – The RD Erred by Approving the Non-Unanimous Settlement in Violation of Act 129.

The MRPL proposal violates Act 129[86] by assigning small business customers to the HP Rider class. Act 129 requires default service providers, like FirstEnergy, to offer a rate that changes no more frequently than quarterly for residential and small business customers. The Commission has defined "small business customer" to mean "a person, sole proprietorship, partnership, corporation, association or other business entity that receives electric service under a small commercial, small industrial or small business rate classification, and whose maximum registered peak load was less than 25 kW within the

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[85] *In Re Implementing of Act 35 of 2007*, Final Omitted Rulemaking Order at 14 (*emphasis added*).

[86] 66 Pa.C.S. § 2807(e)(7).

last 12 months."[87] As explained above, MRPL is defined by the Commission's regulations. Undisputedly, most large customer-generators do not have peak load at or above 25kW. Indeed, these customers typically have no or extremely low peak load. The RD did not outwardly waive this statutory requirement. Under the MRPL proposal, small business customers – inclusive of customer-generators – will have rates that change frequently. This is in direct contradiction of the Public Utility Code and the RD's failure to evaluate this statutory mandate was in error and must be corrected.

IV. CONCLUSION

For these reasons, and the reasons more fully explained in the CGC's Briefs, the CGC respectfully requests that the Commission modify the Non-Unanimous Settlement and deny approval of its MRPL provisions.

Respectfully submitted,

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[87] 52 Pa. Code § 54.2.