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

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

August 31, 2026

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

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

Dear Secretary Homsher:

Enclosed for filing please find the Exceptions of Town Square Energy East, LLC and WGL Energy Services, Inc. to the Recommended Decision issued in the above-captioned matter. Copies of this filing have been served in accordance with the attached Certificate of Service.

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

Best Regards,

STEVENS & LEE

Michael A Gruin

Michael A. Gruin, Esq.

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

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

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

---

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the enclosed 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

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

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

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

Dated: August 31, 2026 Michael A. Gruin

***- Indicates Executed Protective Order Acknowledgement**

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

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

---

# JOINT EXCEPTIONS OF TOWN SQUARE ENERGY EAST, LLC AND WGL ENERGY SERVICES, INC.

---


STEVENS & LEE, P.C.

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


DATED: August 31, 2026

<u>**TABLE OF CONTENTS**</u>

## TABLE OF AUTHORITIES

**Page(s)**

**Cases**

**Statutes**

**Regulations**



**Other Authorities**





8/31/2026 SL1 4663994v1 107998.00018

Pursuant to 52 Pa Code § 5.533, Town Square Energy East, LLC ("Town Square") and WGL Energy Services, Inc. ("WGL") hereby except to the Recommended Decision of the Administrative Law Judges ("ALJs") issued on August 21, 2026 in the above-captioned matter ("R.D."). Specifically, Town Square and WGL except to the R.D.'s determinations that:

1) formally promulgated regulations regarding electric generation supplier ("EGS") contract renewals can be overridden by an electric distribution company ("EDC") via a request for a waiver in an EDC default service case,

2) an EDC can unilaterally impose new "quarterly affirmation" requirements on EGSs that directly contradict existing Commission regulations via a waiver request in a default service case, and

3) FirstEnergy's proposed changes to its Purchase of Receivables ("POR") are permissible and justified by the record developed in this proceeding.

## I. INTRODUCTION

The R.D. issued on August 21, 2026, 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 R.D. addressed, among other things, FirstEnergy's proposed modifications to its Retail Supplier Coordination Tariff to modify the rules governing EGSs' contractual relations with their customers and the rules governing the purchase of EGS receivables by FirstEnergy. The Settlement was opposed by Town Square, WGL, Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy ("EGS Parties"), the Customer Generator Coalition ("CGC"), 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").

The R.D. recommends approval of three separate Retail Shopping proposals which will drastically and negatively alter the competitive retail market framework in FirstEnergy territory, under the guise of addressing customer affordability concerns:

- A proposal to impose new "affirmative consent" requirement on EGS contract renewals and month to month supply service, by means of what FirstEnergy characterizes as a "waiver" of the Commission's existing EGS contract renewal regulations,

- A proposal to require EGSs to provide an attestation of affirmative customer consent on a quarterly basis for all residential customers on variable-priced month-to-month products, and

- A proposal to eliminate eligibility for suppliers to participate in FirstEnergy's Purchase of Receivables program, except for EGS products that are at or below the FirstEnergy price to compare ("PTC") at the time of the customer's enrollment, or at the time of a pricing change.

Despite extensive opposition by multiple entities representing the interests of EGSs, the R.D. recommended approval of the Settlement in its entirety because it purportedly "[met] the requirements of the Public Utility Code and the Commission's regulations, is supported by substantial evidence and is in the public interest."[1] WGL and Town Square respectfully disagree with the R.D.'s recommendation on the Retail Shopping Issues, and in particular strongly urge the Commission to recognize the clear illegality of allowing an EDC to override formally promulgated statewide Commission regulations in the context of a non-unanimous settlement in a default service plan case, as the R.D. recommends.

Overarching FirstEnergy's Retail Shopping proposals is a generalized concern with affordability, which everyone agrees is an important issue. However, the record developed in this case shows that the proposals approved by the R.D. will violate the Commission's longstanding retail market regulations and will significantly limit customer options to manage their electricity expenses, to the detriment of affordability and bill predictability.

As a threshold matter, the proposed changes to EGS contract renewal rules and a new quarterly affirmation requirement are clearly procedurally defective and cannot lawfully be enacted in the context of a utility's request to waive regulations that govern EGSs. In order to lawfully enact FirstEnergy's proposal, the Commission would need to repeal or amend its longstanding statewide EGS customer enrollment and renewal regulations via a full-blown rulemaking proceeding consistent with the Commonwealth Documents Law, the Regulatory Review Act, and 1 Pa. Code § 7.1, rather than approve piecemeal changes in a single utility's default service proceeding. Even if FirstEnergy had proven that a modification of the EGS customer enrollment and renewal framework was somehow appropriate or necessary to address an existing problem (which it clearly has not

[1] R.D., at p. 1

done), the Commission is lawfully precluded from modifying its regulations unless and until it undertakes a formal rulemaking process to do so.

FirstEnergy's POR modification proposal is unprecedented and would contradict the longstanding Commission determination that a well-functioning POR program is essential to the competitive retail markets. FirstEnergy fails to explain how the existing POR program has contributed to unaffordable utility bills or how its proposal would benefit affordability in way. To the contrary, the record developed in this proceeding demonstrates that FirstEnergy's proposal would diminish customer options to lower their electric bills and potentially lead to the complete elimination of residential retail choice in the FirstEnergy territory.

The R.D. improperly overlooks these significant legal issues. The R.D. bases its determinations solely on the acceptance of FirstEnergy's proposition that total supply charges to EGS customers have exceeded what those charges would have been under default service, and therefore customers have been harmed. But in addition to ignoring the serious legal defects with FirstEnergy's proposals, the R.D. dismisses the fact that FirstEnergy failed to make any connection between its proposed changes and the alleged harms customers have suffered. The R.D. also does not recognize the harm to customer that will result from FirstEnergy's proposals.

## II. EXCEPTIONS TO RECOMMENDED DECISION

### A. Exception No. 1: FirstEnergy's Proposed Changes to EGS Contract Renewal Requirements Cannot be Approved, Because it is Clearly Unlawful to Modify Existing Commission Regulations Governing EGSs via a Waiver Request in an EDC Default Service Proceeding

The R.D. openly recognizes that FirstEnergy's proposal to return customers to default service at contract expiration directly conflicts with the longstanding statewide EGS contract expiration and renewal regulation codified at 52 Pa. Code § 54.10 (3).[2] Nonetheless, the R.D. incorrectly concludes that FirstEnergy's request for a waiver of that regulation is legally permissible and justified by the record in the proceeding.[3] The R.D.'s conclusions on the policy justification for approving FirstEnergy's proposals are addressed below. However, even before the substantive merits of FirstEnergy's proposal are addressed, the Commission must evaluate the legality of whether it may legally approve an EDC's request to waive EGS contract renewal regulation at 52 Pa. Code § 54.10 (3) and allow an EDC to establish its own custom set of EGS contract renewal rules for its territory. The R.D. did not undertake this evaluation, but the Commission is obligated to do so. That evaluation mandates only one possible outcome: a finding that FirstEnergy's request to waive a formally promulgated EGS contract renewal regulation proposed is defective and cannot lawfully be approved. As explained below, the only lawful way to revise the requirements 52 Pa. Code § 54.10 (3) would be to undertake a new formal rulemaking proceeding.

[2] See R.D., at p. 195
[3] R.D., at p. 197-198

1. <u>FirstEnergy's "waiver" request is procedurally defective and unlawful</u>

Importantly, the regulation for which FirstEnergy seeks a "waiver" (52 Pa. Code § 54.10 (3)) is not a regulation that governs the actions of ***<u>EDCs</u>*** in any way, shape or form; rather, it is a regulation that explicitly and solely governs the actions of ***<u>EGSs</u>*** and their interactions with their customers. In other words, FirstEnergy is seeking a waiver of a regulation that does not apply to it, but instead applies to an entirely different universe of companies. Waivers cannot be sought from regulations that do not apply to the waiver-seeker in the first place.

The regulation in question was promulgated in 2014 via a Final Omitted Rulemaking Order. The regulation was amended in 2020 through the standard rulemaking process, beginning with a Notice of Proposed Rulemaking Order issued on December 7, 2017 and culminating with a Final Rulemaking Order on February 27, 2020.[4] The regulation makes no mention of EDCs whatsoever, and contrary to the R.D.'s conclusion, the regulation imposes no obligations on EDCs. Rather, the regulation is specific to EGSs only, and imposes detailed obligations on EGSs to provide specific notices to customers in advance of the expiration of the customer's retail supply contract. The regulation includes precise directions regarding the timing for issuing the notices, the language of the notices, and the methods of delivery of the notices. The regulation concludes by directing EGSs

[4] See *Final-Omitted Rulemaking Order Regarding the Provisions of Notices of Contract Expiration or Changes in Terms for Residential & Small Business Customers*, Docket No. L-2014-2409385 (Order entered April 3, 2014), and *Rulemaking Regarding Electricity Generation Customer Choice*, Docket No. L-2017-2628991 (Order entered February 27, 2020).

how to proceed in situations where the customer does not respond to the expiration notices, and mandates that fixed duration contracts "**shall be converted**" to either month to month contacts or another fixed duration contract as long as the new contract allows cancellation at any time without a cancellation fee and "**shall remain in place**" until the customer chooses another option (emphasis added).

Under FirstEnergy's proposal, the final section of the regulation relating to contract continuations (subsection 3) would be completely altered such that customers would not continue to be served by the EGS upon contract expiration. Instead, upon expiration of the customer contract, the EGS would be required to return a customer to default supply service following the expiration of their EGS contract regardless of whether the contract includes automatic renewal provisions, unless the EGS submits proof that the customer affirmatively consented to the continuation of their EGS service.

What the R.D. has characterized as a "waiver" is not a waiver at all. It is a request to completely override a carefully constructed and consistently enforced regulation that has governed EGS rights and duties regarding contract expirations throughout the Commonwealth for over a decade, and replace it with a new contract renewal framework that only applies in FirstEnergy territory. In other words, FirstEnergy is proposing to <u>amend or repeal</u> the regulation at 52 Pa. Code 54.10, not request a waiver from it. In examining FirstEnergy's request, it is important to understand the nature of a "waiver" request versus a request to issue, amend or repeal a regulation, and the circumstances under which the Commission evaluates such requests.

A petition for waiver is an ad hoc adjudicatory request for relief from the application of an existing regulation in a particular case in light of a specific set of circumstances that justify the relief.[5] As the Commission has repeatedly explained:

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

By contrast, a request to amend or issue a regulation invokes the agency's legislative rulemaking authority to change the regulation prospectively for all affected parties, and it is preferable for agencies to adopt and elaborate law and policy by rulemaking rather than ad hoc adjudication.[7] The Commission's regulation at 52 Pa. Code §5.43(a) requires petitions for the issuance, amendment, waiver or repeal of a regulation to set forth clearly the interest of the petitioner in the subject matter, the specific regulation, amendment,

---

[5] 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).

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

[7] See generally Jim Rossi, *Making Policy Through the Waiver of Regulations at the Federal Energy Regulatory Commission*, 45 Admin Law. Rev. 255, at pp. 275-277 (1995), noting "As defined in the Administrative Procedure Act (APA), a rule is a statement of general applicability and future effect that implements, interprets, or prescribes law or policy or the organization, procedures, and standards for practice before an agency. Rules arise from formal or informal rulemaking proceedings before the issuing administrative agency. Rules create law in the form of statements that are binding on those persons or entities to whom they are addressed, regardless whether those persons or entities participated in the rulemaking proceeding that generated the rule".

waiver or repeal requested, and cite by appropriate reference the statutory provision or other authority involved. Notably, petitions for the issuance or amendment of a regulation also must incorporate the new proposed regulation or amendment. In other words, a waiver excuses compliance with an existing rule under temporary and limited exceptional circumstances, while a regulatory change alters the rule itself, implicating statewide policy consistency, stakeholder reliance interests, and statutory rulemaking obligations. FirstEnergy's proposal clearly is seeking long-term modification of a regulation rather than a temporary excusal from it.

The R.D. ignores the legal defects with FirstEnergy's EGS Contract Renewal proposal and treats the proposal as a simple element of an EDC's default service plan over which the EDC has discretion. The R.D. fails to recognize the Commission's EGS contract renewal regulation is not analogous to a standard component of an EDC default service plan, but rather is a formally promulgated and legally binding rule that applies statewide until rescinded or modified through a formal rulemaking. The R.D. essentially accepts FirstEnergy's argument that it can merely seek to "waive" the EGS contract renewal rules, and completely ignores a critical procedural defect in FirstEnergy's request for a waiver. Even though FirstEnergy's proposal clearly requires a modification of the contract expiration regulation that has governed EGSs since 2014, FirstEnergy did not file a petition to amend or repeal the regulation in question. Doing so would have required FirstEnergy to incorporate amended regulation language in its request, in accordance with 52 Pa. Code §5.43(a). Instead, FirstEnergy provided a very general and high-level explanation of the new contract expiration rules that it wanted to unilaterally implement in its territory and rolled that request into its default service proceeding with a two-line request for a waiver in Paragraph 60 of its DSP Petition. This was plainly done in an attempt to circumvent the mandatory requirements for amending regulations in Pennsylvania.

Under Pennsylvania law, amendment or repeal of a regulation requires the agency to follow the same processes that apply to the issuance of regulations. The Commonwealth Documents Law ("CDL")[8], the Regulatory Review Act ("RRA")[9], the Commonwealth Attorneys Act [10] and 1 Pa. Code § 7.1 establish a mandatory, formal rulemaking procedure that is, with rare exceptions, required for the promulgation of all regulations.[11] Under the Commonwealth Documents Law, an agency must give notice to the public of its proposed rulemaking and an opportunity for the public to comment.[12] The Commonwealth Court has stressed that adherence with the CDL and the RRA is paramount when an agency intends to legally bind regulated entities. [13]

Under the CDL an agency is required to give public notice of its intention to promulgate, ***amend or repeal*** any administrative regulation. Such notice must include the text of the proposed administrative regulation, a statement of the statutory or other authority under which the administrative regulation or change therein is proposed to be

---

[8] Act of July 31, 1968, P.L. 769, as amended, 45 P.S. §§ 1102-1208
[9] 71 P.S. § 745.1, et. seq.
[10] Act of October 15, 1980, P.L. 950, No. 164, 71 P.S. § 732-101, et. seq.
[11] *Naylor v Commissioner, Department of Public Welfare*, 54 A.3d 429 (Pa. Cmwlth 2012; *Germantown Cab Co. v. Philadelphia Parking Auth.*, 993 A.2d 933, 937 (Pa.Cmwlth.2010), aff'd, 614 Pa. 113, 36 A.3d 105 (2012).
[12] Section 201 of the Commonwealth Documents Law, 45 P.S. § 1201; *Borough of Bedford v. Dept. of Envtl. Prot.*, 972 A.2d 53 (Pa.Cmwlth.2009).
[13] See, *Pennsylvania School Boards Association v. Mumin*, 317 A.3d 1077 (Pa. Cmwlth. 2024), at 1099.

promulgated, a brief explanation of the proposed administrative regulation or change therein, and a request for written comments by any interested person concerning the proposed administrative regulation or change therein.[14] Before taking action upon any administrative regulation *or change therein*, the agency shall review and consider any written comments submitted and may hold such public hearings as seem appropriate.[15]

FirstEnergy's contract renewal proposal would result in a drastic alteration of the regulatory framework for EGS contract renewal that is currently codified in 52 Pa. Code § 54.10(3). In order for such action to be legitimate and enforceable, it would need to be done through formal rulemaking process to amend the regulation in question.

FirstEnergy's request cannot legitimately be considered a petition for a waiver because the regulation in question does not govern FirstEnergy's actions in any way. Petitions for waiver by EDCs requesting relief from various regulations that govern their activities are common, and in the past EDCs have filed petitions which requested temporary relief from various elements of the retail electricity market operations. However, in all of these cases, the EDCS sought relief from regulations that expressly governed their own duties and obligations, such as obligations related to eligible customer lists and switching timelines.[16] None of the prior EDC waiver petitions sought to change

[14] See 45 P.S. § 1201 and 1 Pa. Code § 7.1 (Emphasis added)
[15] See 45 P.S. § 1202 and 1 Pa. Code § 7.2 (Emphasis added).
[16] See, e.g., *Petition of Pike County Light & Power Company For Waiver of Regulations Regarding Standards for Changing Customers Electric Generation Supplier*, Docket No. P-2014-2437967 (Order entered Nov. 25, 2014); *Joint Petition of Citizens Electric Company of Lewisburg, PA and Wellsboro Electric Company For Temporary Waivers of 52 Pa. Code Section 57.174*, Docket Nos.P-2014-2451181, P-2014-2451180 (Order entered December 4, 2014); *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Temporary Waiver of*

the regulations that ***apply to EGSs.*** In fact, the R.D. did not identify a single example of a party requesting a waiver from the Commission of a regulation that does not apply to the requesting entity in the first place.

The Commission must recognize FirstEnergy's action for what it is: an attempt to broadly amend the regulation that governs EGS contract renewals without following the required process for amending a regulation. For these reasons, FirstEnergy's request to implement a new contract renewal regime in its territory must be rejected as being procedurally defective and unlawful.

2. FirstEnergy's "waiver" request is neither narrow in scope nor temporary in nature and therefore cannot be approved

Again, as the Commission has repeatedly explained:

> "[w]aivers of Commission regulations are not liberally construed or lightly granted. Waivers are not granted implicitly or of unlimited duration. In reality, waivers **are narrowly crafted and generally temporary in nature**.[17]

*Technical Requirements of 52 Pa. Code 57.174,* Dkt. Nos. P-2014-2449010, P-2014-2449015, P-2014-2449017, and P-2014-2449027 (Order entered December 4, 2014); *Petition of PPL Electric Utilities Corporation for Temporary Waivers from Certain Technical Requirements of 52 Pa. Code 57.174 and 57.179,* Dkt No. P-2014-2445072 (Order entered May 19, 2015); *Petition of PECO Energy Company for Temporary Waiver of Regulations Related to the Required Days In a Billing Period*, Dkt. No. P-2014-2446292 (Order entered December 8, 2016).

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

The R.D. incorrectly finds that FirstEnergy's proposal is "narrowly crafted" because it is limited to a "narrow and specific subset of FirstEnergy Customers" and finds that the proposal is "temporary in nature" because it lasts only for the duration of FirstEnergy's default service program (June 1, 2027 to May 31, 2031). [18] This conclusion is not accurate or reasonable. FirstEnergy's proposal cannot reasonably be determined to be "narrowly crafted" when it will significantly impact every single EGS operating in FirstEnergy territory and every single potential customer of those EGSs. The proposal cannot be considered "temporary in nature" when it lasts for the entire four-year term of FirstEnergy's default service program.

The R.D. does not identify a single example of the Commission granting a waiver of a regulation that was anywhere near as broad and long as the "waiver" that FirstEnergy is requesting. Similarly, none of the signatories to the Joint Settlement were able to point to any prior waiver approval that is in any way comparable to FirstEnergy's requested waiver. To the contrary, the only examples of waivers mentioned by the settling parties serve to highlight the significant legal defect with the attempt to modify the Commission's EGS regulations through a "request for waiver" in this case. For example, on page 21 of its Main Brief, CAUSE-PA cites to a case in which Duquesne Light Company requested a temporary waiver of the Commission's three-day customer switching regulation that went

---

*Commission Regulations*, Dkt. No. P-2021-3026755 (Order entered September 15, 2021). (Emphasis added).

[18] R.D., at p. 197

into effect on December 15, 2014.[19] However, the waiver request in the *Duquesne Light* case could not be more different than the waiver request in this case. In the *Duquesne Light* case cited by CAUSE-PA, Duquesne requested a waiver of a regulation (52 Pa. Code § 57.174) that governed the actions of EDCs in effectuating customer changes of electricity suppliers. By contrast, in the present case FE PA is requesting waiver of a regulation that does not govern its own actions, but rather governs the actions of EGSs. To the extent an EGS would be seek relief from the contract expiration requirements, the EGS would be able to submit a request for a waiver of the regulation and present the legal and factual justification for why the regulation's requirements should be temporarily waived as to that specific EGS. But this is far different from an EDC seeking an industry wide change to a regulation that does not govern EDC activities at all, which is what FE PA is doing in the present case.

Furthermore, in the *Duquesne Light* case, Duquesne requested a one-month temporary waiver of the regulation in question, and provided extensive legal and factual justification for the limited temporary waiver. By contrast, in the present case, FE PA is requesting a minimum of a four-year alteration of the EGS contract renewal regulation, with no discussion of the relevant legal authority or factual justification for a permanent modification of the formally promulgated regulation. The stark difference between the circumstances of the *Duquesne Light* case and the circumstances of the present case

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

demonstrates that FE PA's "waiver" request is completely defective and cannot be granted as a matter of law. As explained at length in the WGL/Town Square Joint Main Brief at pp. 14-22, even if FirstEnergy had justified their position that the Commission's contract expiration and renewal regulations should be changed, such a change to the regulations cannot be legally accomplished through a barebones "request for waiver". Such a change can only be made through a formal rulemaking process.

**B. Exception No. 2: FirstEnergy's Proposed "Quarterly Affirmation" Contradicts Existing Commission Regulations And Cannot Lawfully Be Approved Without Undertaking a Formal Rulemaking Process.**

The R.D. recommends approving FirstEnergy's proposal to require EGSs to provide an attestation of affirmative customer consent on a quarterly basis for all residential customers on variable-priced month-to-month products.[20] The R.D. concludes that the Quarterly Affirmation requirement "supplements, rather than conflicts with, Commission regulations".[21] However, the R.D. completely fails to explain how the FirstEnergy "Quarterly Affirmation" proposal, even if it was only a "supplement", can be lawfully enacted in light of the Commission's current customer enrollment regulation at 52 Pa. Code §54.5 and customer renewal regulation at 52 Pa. Code §54.10. The R.D. literally contains no discussion of the legality of this proposal, and even a cursory examination of the legal underpinnings of the proposal must result in the conclusion that it cannot be enacted without undertaking a formal rulemaking process.

[20] R.D. at pp. 208-209
[21] R.D. at p. 208

Just like its contract renewal proposal, FirstEnergy proposes to implement the "Quarterly Affirmation" requirement by way of changes to its Supplier Coordination tariff, and characterizes its request as a simple request for a "waiver" of the Commission's regulation at 52 Pa. Code § 54.10(3).[22] Just like its contract renewal proposal, FirstEnergy's "Quarterly Affirmation" requirement directly contradicts the Commission's lawfully promulgated regulations which govern EGS enrollments and renewals of those contracts, and seeks to amend those regulations without following the legally required processes for doing so. In fact, in the case of the "Quarterly Affirmation" proposal, FirstEnergy <u>has not even requested a waiver of the customer enrollment regulations that controls the process the FirstEnergy seeks to change.</u>

While FirstEnergy's DSP Petition requests a "waiver" of 52 Pa. Code § 54.10(3), it completely ignores other Commission regulations that are directly implicated by its "quarterly affirmation" proposal. For instance, the Commission's existing EGS customer disclosure statement regulations (promulgated and amended through the procedurally correct rulemaking processes in 2007, 2014 and 2020)[23] contain no requirement for EGSs to continually obtain consent from customers to continue their EGS supply service. The Commission's regulation at 52 Pa. Code §54.5 provides a very detailed set of rules governing EGSs' terms of service with their customers, including how month-to-month

---

[22] See FirstEnergy Petition for Approval of DSP, at paragraphs 51 and 60.

[23] See *Disclosure Statement for Residential and Small Business Customers; Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Dkt. No. L-2014-2409385 (Final-Omitted Rulemaking Order entered April 3, 2014); *Rulemaking Regarding Electricity Generation Customer Choice*, Dkt. No. L-2017-2628991 (Final Rulemaking Order entered February 27, 2020);

and variable price enrollments must be handled. The regulation requires the EGS to provide the customer with conditions and limits on price variability, information about how customers will receive notice of pricing changes, promotional information, explanations of penalties and fees, renewal provisions, cancellation provisions, the right of rescission, and how to contact the Commission and the OCA for information about retail electricity shopping. The regulations contain no requirement whatsoever for an EGS to repeatedly go back to its existing customers to ask them to confirm that they still want to receive service from the EGS. The Commission has examined this regulation multiple times since it was originally enacted, and the Commission never suggested that such a requirement might be appropriate. The Commission's EGS contract expiration regulation at § 54.10 also contains no requirement for EGSs to continually obtain customer consent for continued service. That regulation only requires notice prior to contract expiration and unequivocally permits automatic renewal and continuous service of EGS customers without the need for any repeated affirmation of consent by the customers.

The Non-Unanimous Settlement would impose a new regulatory requirement on EGSs' relations with their customers and new EGS customer contract rules that are directly contrary to the Commission's existing regulations at both 52 Pa. Code §54.5 and §54.10. In order to institute such a regulatory requirement on EGSs, it is first necessary for the Commission's controlling regulations to be amended. And, as set forth above, amendment of a regulation requires the agency to follow the same processes that apply to the issuance of regulations. The Commonwealth Documents Law, the Regulatory Review Act, the Commonwealth Attorneys Act and the provisions of 1 Pa. Code § 7.1. Those processes obviously have not been followed (or even attempted) here, and therefore FirstEnergy's "Quarterly Affirmation" proposal should be dead on arrival.

The R.D. completely omits any discussion of how the Quarterly Affirmation proposal can be lawfully enacted without changing these regulations through the formal rulemaking processes. For these reasons and the other reasons set forth in the WGL/ Town Square Joint Main Brief at pp. 22-25, that Quarterly Affirmation requirement must be rejected as a matter of law.

**C. <u>Exception No. 3</u>. – The R.D. Failed to Recognize That FirstEnergy's Proposed Changes to its Purchase of Receivables (POR) Program Would Result in the Unlawful Elimination of a Viable Retail Market, to the Detriment of Customers**

The R.D. approved FirstEnergy's proposed changes to its POR program, which would require "rate-ready" billing if suppliers want to use FirstEnergy's utility consolidated billing, and the elimination of the eligibility for EGSs to participate in FirstEnergy's POR program except for a limited category of products that FirstEnergy has chosen. Specifically, FirstEnergy's proposal would only allow POR for supplier products that are at or below the FirstEnergy PTC at the time of the customer's enrollment, or at the time of a pricing change.[24] The R.D.'s recommended approval of FirstEnergy's POR changes are not supported by the record developed in this case and is directly contrary to the Commission's longstanding mandate for viable POR programs

1. <u>Pennsylvania law mandates a competitive retail electricity market, and the Commission long ago concluded that POR is vital to an effective retail electricity market</u>

[24] FE-PA Statement No. 1, at p. 21.

The R.D. emphasizes that POR programs are voluntary, but it completely ignores the reality that Pennsylvania law mandates a competitive retail electricity market, and the Commission long ago concluded that POR is vital to an effective retail electricity market. The R.D. completely ignores this bedrock principle that the Commission has consistently reinforced for the past two decades.

In connection with the expiration of generation rate caps in the late 2000s, the Commission opened several dockets to evaluate steps that EDCs should take to minimize barriers to retail competition. The Commission took these steps:

> "not because competition in and of itself is a good thing, but because the Commonwealth of Pennsylvania has determined through the Electricity Generation Customer Choice and Competition Act ("Competition Act"), 66 Pa. C.S. §§ 2801-2812, that competition among utilities and independent suppliers of generation is the best means available to keep the cost of electricity down. Lower energy costs relative to other states can help the Commonwealth keep the industry and commerce it has now and attract new investment."[25]

After taking extensive input and comments from many interested stakeholders, including EDCs, EGSs, and OCA, the Commission concluded that:

> "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

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

> Pennsylvania, as envisioned by the Competition Act., 66 Pa. C.S. § 2802(2)."26

The Commission went on to explain that "[i]n the Commission's judgment, a POR program is an essential tool to reduce barriers to entry by EGS firms and to create the fully functional retail market for generation envisioned by the General Assembly in Chapter 28" [27], and "a properly functioning POR program can reduce costs for shopping customers and, therefore, be an incentive for the Company to minimize its own cost of electricity for DSP customers."[28]

Pennsylvania was not alone in recognizing the importance of POR to a viable retail electricity market, and POR has been a key element of retail electric choice markets throughout the country.[29] Suppliers in Pennsylvania, like in most states with retail energy choice, utilize utility consolidated billing for their electric supplier charges, so customers do not receive a separate bill from their suppliers. POR was developed as a mechanism to ensure that suppliers received payment for the supply that they provided to customers and that was billed by utilities. POR has become the standard framework in most markets in the country that utilize utility consolidated billing.[30] The R.D. improperly overlooks the importance of POR to a viable retail electricity market and how unprecedented and disruptive FirstEnergy's POR proposal would be if approved.

---

[26] Id., at p. 27
[27] Id., at p. 28
[28] Id. at pp. 29-30
[29] In addition to Pennsylvania, utilities in the following jurisdictions have POR Programs: New York, Connecticut, Massachusetts, New Jersey, Ohio, Delaware, District of Columbia, Illinois, Rhode Island, and New Hampshire. Town Square Statement No. 1., at p. 6.
[30] Town Square Statement No. 1, at p. 6, lines 8-15.

2. FirstEnergy's proposed POR changes would violate the Competition Act's mandate for a competitive retail electricity framework.

As noted above, Pennsylvania's competitive retail electricity framework is mandated by the Competition Act, and while that statute remains in force, the Commission has an obligation to ensure the retail market functions effectively. To achieve that result the Commission long ago determined that EDCs must have POR programs in place, and more specifically, *viable* POR programs. The record reflects that FirstEnergy's proposed POR program is simply not viable and would result in the destruction of the residential retail market in its territory, rather than facilitating the fully functional retail market for generation envisioned by the General Assembly in the Competition Act.

It is well-settled that POR is an essential tool to reduce barriers to entry by EGSs and act as an incentive for EDCs to minimize the cost of electricity for DSP customers.[31] The R.D. ignores these principles, as well as the proof that POR provides tangible benefits to customers in practice. The reality is that POR removes credit risk from the equation when EGSs make offers to customers. Requiring suppliers to evaluate individual customer credit risk provides a significant barrier to a vibrant retail choice market. Under both the utility consolidated billing model and the dual billing model, suppliers have no ability to terminate service or any other mechanism to enforce the collection of their electricity supply charges, other than to pursue collection of unpaid bills after the fact. Because of this, if there was no POR, prudent suppliers would need to evaluate customer creditworthiness when extending offers to them. For customers with a higher credit risk,

[31] Id. at pp. 29-30

there is a higher risk of nonpayment of bills, and as a result customers with a higher credit risk might not be offered the best rates for energy supply.[32] This is a concept that applies to many industries, and is not unique to retail energy. For instance, cell phone companies, auto loan lenders, insurance providers, and other industries sometimes charge higher rates to customers with higher payment risk. POR was implemented in part to remove the credit and payment risk from the equation. With POR, suppliers do not need to screen customers for payment risk, and are therefore able to offer the best rate products to all customers equally. This is a very important point to understand. POR provides access to better rates to more customers, regardless of their income or credit status.[33] If suppliers must bear full credit risk for competitive products that can be above the PTC at the time of enrollment depending on market conditions, many suppliers will rationally reduce offerings or exit the market. This will reduce customer choice and eliminate options that protect customers from future PTC increases and/or provide other benefits that some customers may value[34], which will be discussed in the section below.

3. <u>The R.D. ignores the negative consequences of FirstEnergy's POR proposal</u>

The record in this case makes it clear that FirstEnergy's POR proposal would make it much more difficult to offer residential supply products in FirstEnergy territory, and would likely result in most EGSs exiting the market altogether. The record reflects that if POR was not available for certain types of products, suppliers would need to price-in credit

[32] Town Square Statement No. 1., at. P. 7, lines 8-10
[33] Town Square Statement No. 1., at p. 7.
[34] Town Square Statement No. 1., at p. 9.

and payment risk when making offers for such products to residential customers, and it would significantly reduce the number and variety of customer offers.[35] As just one illustration of how critical POR is to serving residential customers, the R.D. acknowledges that there are currently no EGSs that are offering products to residential customers without POR, even though all EGSs have option to do so.[36] More precisely, according to FirstEnergy's data responses, there are currently 70 EGSs serving residential customers in the Met-Ed rate district, 71 serving residential customers in the Penelec rate district, 54 serving residential customers in the Penn Power rate district, and 67 serving residential customers in the West Penn Power rate district, ***and not a single one has chosen to serve residential customers without POR.*** [37] If FirstEnergy's proposal is approved, a supplier would need to modify its product offers to qualify for the narrow restrictions that FirstEnergy has unilaterally selected in order to serve residential customers. A supplier could only offer a product using rate-ready billing and would need to ensure that its product offer is below the PTC, which changes every six months with little predictability. This proposal would eliminate a variety of offers from POR qualification, including:

- An offer for a flat monthly bill for electric supply regardless of usage. That type of offer is only available using bill ready billing. Therefore, it would not be available under FirstEnergy's proposal.

- An offer that includes value-added elements, such as renewable energy, rewards dollars, or energy efficiency devices or services would not be eligible for POR if the price for such offers is even only slightly higher than the PTC.

[35] Town Square Statement No. 1., at p. 9, lines 16-20
[36] R.D., at p. 228
[37] Town Square Exhibit RM-1 (FirstEnergy response to RESA Set 1, No. 9)

- An offer for a long-term fixed rate that is higher than the current PTC. Depending on market conditions, suppliers can offer value and certainty to customers by offering fixed price contracts that lock in a price for the customer, which can be beneficial in times of rising prices.[38]

The record includes a concrete example of how FirstEnergy's proposal would eliminate money-saving options for customers, which the R.D. completely ignores. FirstEnergy's PTC has consistently risen over the years and has more than doubled since March of 2021 in three of the four FirstEnergy rate districts[39]. So, while a supplier's rate might be higher than the PTC at the time of enrollment, if the PTC rises, the supplier's fixed rate could very well be lower than the PTC later in the contract term. However, under FirstEnergy's proposal, such an offer <u>would not</u> be eligible for POR because it is higher than the current PTC and therefore suppliers likely would not offer it.

The record demonstrated that FirstEnergy's proposal would be to significantly limit the variety of offers that are available to residential customers in its territory and would completely exclude certain offers that would save customers money. For instance, as of April 8, 2026, there were 66 different supplier fixed- rate offers of 12 months or longer in MedEd territory according to PaPowerSwitch, but only a few were lower than Met-Ed's current price to compare as of that date. In Penelec territory there were 73 fixed rate offers of 12 months or longer, but only 1 was lower than the Price to Compare.[40] So, if FirstEnergy's proposal were in place, those offers would not be able to participate in POR

[38] Town Square Statement No. 1, at p. 10, line 6 through page 11, line 2
[39] Town Square Statement No. 1, at p.11, lines 4-7 and Exhibit RM-2.

[40] See Town Square Exhibit No. RM-3(PaPowerSwitch results for April 8, 2026).

and therefore would likely not be offered. A review of these same April offers show that many will ultimately result in cost savings for customers once FirstEnergy's PTC increased on June 1, 2026. But, under FirstEnergy's proposal, none of those offers that were above the April PTC would be eligible for POR and therefore likely would not be offered by suppliers. This would cause many customers to lose the option to choose products that provided price certainty for 12 or more months just because the products were at a slightly higher price than the PTC at one point in time, but may well be below the PTC if the PTC rises.

The R.D. fails to refute the proof submitted by the various EGS parties that FirstEnergy's POR proposal will have negative customer consequences in the form of fewer options to control their electricity expenses. The R.D. also dismisses the evidence in the record demonstrating that FirstEnergy's POR proposal will likely result in the complete extinguishment of the residential electricity supply market in Pennsylvania, which would leave customers with no choice other than default supply at a time when default supply prices continue to rise.[41] RESA witness Lacey explained that in 2024, Maryland enacted legislation that removed POR from the residential market, eliminated automatic contract renewals, and placed price restrictions on product offerings. The result of the legislation was an end to the residential market in Maryland as all of the suppliers ceased making offers, and an outcry from customers who suddenly realized they have no choice but to take the utility default service rate.[42] The experience in FE-PA territory is

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

similar, because as noted above not a single EGS has chosen to serve residential customers without POR. [43]

Once it is accepted that most suppliers will not make offers without POR, the negative customer consequences of FE PA's proposal become apparent. The fact is that implementing FE PA's POR proposal will remove numerous options for customers to save money. This is illustrated by the number of long-term fixed-price money-saving offers that would disappear under FE PA's proposal. The record in this case includes a table showing sixteen actual EGS fixed- rate offers of 12 months or longer, that were posted on PaPowerSwitch in Met-Ed territory with rates higher than the Met-Ed PTC as of April 8, 2026. Because the prices were higher than the PTC, they would not be eligible for POR under FE PA's proposal, and therefore likely would not have been offered by the EGSs in question, for the reasons explained by RESA and Town Square. However, under the currently existing POR framework, the EGS made these price offers available, and each of these offers subsequently ended up being <u>lower</u> than the Met-Ed PTC when it changed on June 1, 2026. [44]

This is a concrete illustration of why simple point-in-time comparisons between EGS pricings and the PTC do not provide the full story when it comes to the benefits of shopping. The record in this case shows how customers can currently take advantage of long-term fixed price EGS offers to pay less than the PTC over time. And the record shows

---

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

[44] This information was drawn directly from PAPowerSwitch and FE PA's PTC tariff filing, and it is in the record in Town Square Exhibits RM-3 and RM-4.

how those offers would disappear if FE PA's POR proposal is approved. This is the simplest of examples and does not even account for the other benefits that retail electricity shopping provides to customers, as described by RESA and Town Square's witnesses.[45] The R.D. fails to address this negative consequence of FE PA's POR proposal and does not explain how removing cost saving offers from the marketplace is justifiable or in the public interest.

**D. Exception No. 4. – The R.D. Improperly Accepted the Joint Settlement's Unsupported Argument that EGS Products are Disproportionately Driving Uncollectible Expenses**

Much of the R.D.'s support for FirstEnergy's POR proposal boils down to a finding that "…a documented concern about the levels of residential generation uncollectible expense that are attributable to purchased EGS accounts receivable…".[46] But the R.D.'s conclusion on this point is based on a cursory acceptance of the cherry-picked data submitted by the supporters of the Joint Settlement, and the R.D. failed to consider the clear data in the record which directly contradicts that conclusion.

The main argument in support of the POR proposal was the suggestion – with very little evidence or analysis – that above-PTC pricing is contributing to increased POR-related uncollectible expense and therefore, FirstEnergy proposal is intended to reduce exposure to "EGS-driven write-offs" by prohibiting POR for above-PTC offers. But this

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

[46] R.D. at p. 227

justification for FirstEnergy's POR proposal simply does not hold water upon closer review.

FirstEnergy attempted to justify its POR changes by pointing to supposedly high levels of uncollectible accounts served by suppliers. FirstEnergy says that ending POR for EGSs that charge prices higher than the PTC would substantially reduce its customers' exposure to "unreasonable EGS-driven uncollectible expenses".[47] In fact, the ***only*** justification provided by FirstEnergy for its POR proposal was the supposedly "unreasonable EGS-driven uncollectible expenses". But when FirstEnergy was asked to provide details about its uncollectible expenses, it admitted that residential and commercial customers also pay for uncollectible expenses from default service as well as from POR uncollectibles.[48] In fact, FirstEnergy's data responses show that accounts served by default service are actually contributing *more* to uncollectible expenses than accounts served by suppliers.[49] Another problem with FirstEnergy's "uncollectibles" justification is that the modest rise in POR-related uncollectibles since 2022 is far outpaced by the rise in Default Service uncollectibles during that period, and by the rise in the PTC during that same period. According to FirstEnergy's Exhibit DMY-11, system-wide POR-related uncollectibles rose by approximately **23%** between 2022 and 2025. The same chart shows that system-wide Default Service uncollectibles rose by approximately **31%** during the same time frame. Meanwhile, during the same time frame the PTC rose by at least **78%**

[47] FirstEnergy Statement No. 1, at page 28.
[48] See FirstEnergy response to RESA Set I, No. 11 (Exhibit RM-6)
[49] See FirstEnergy response to RESA Set I, No. 10 (Exhibit RM-7)

in each rate district, as shown on Exhibit RM-2. It bears repeating that the impact of EGS uncollectibles was the sole justification that FirstEnergy gave for its POR proposal, but the data makes it clear that both the PTC and the rate of Default Service uncollectibles have risen much more significantly than the rate of EGS uncollectibles.

The charts below present the FirstEnergy uncollectibles data side-by-side with the PTC increases:

**Uncollectible Expense Increases: 2022-2025**

| Year | Default Service Uncollectible Amounts | % increase from 2022-2025 | POR Uncollectible Amounts | % increase from 2022-2025 |
|---|---|---|---|---|
| 2022 | $12,470,103 | | $8,416,863 | |
| 2025 | $16,329,852 | **30.95%** | $10,328,026 | **22.71%** |

Source: FirstEnergy Exhibit DMY-11

**PTC Increases: 2022--2025**

| | PTC Met Ed | PTC Penelec | PTC PP | PTC WPP |
|---|---|---|---|---|
| as of 3/1/22 | 0.06832 | 0.06232 | 0.07082 | 0.05667 |
| as of 12/1/25 | 0.12965 | 0.11756 | 0.12606 | 0.10947 |
| % increase | **89.77%** | **88.63%** | **78.00%** | **93.17%** |

Source: Town Square Exhibit RM-2 (FirstEnergy Response to RESA I-6)

With the sole justification for FirstEnergy's POR change disproven by its own data, there is literally no legitimate justification for FirstEnergy's unprecedented POR proposal to be approved.

FirstEnergy and CAUSE-PA placed a great deal of weight on supposedly high levels of terminations of shopping customers to justify the proposal to limit POR.[50] But a closer look at FirstEnergy's data raises troubling questions about what appears to be targeted and discriminatory terminations of shopping customers.

The record shows that FirstEnergy is terminating many more shopping customers than non-shopping customers each year.[51] But these termination numbers are grossly out of line with all of the other metrics that FirstEnergy provided regarding payment trouble and arrearages. For instance:

- FirstEnergy's response to CAUSE PA I-7, Attachment-A was admitted into the record as RESA Exhibit FL-29. The attachment shows the number of "payment troubled" customers by category for the years 2022-2025. The attachment shows that in every year, most of the "payment troubled customers" were on <u>default supply</u>, and far fewer were shopping customers.

- FE response to CAUSE PA 1-6, attachment B was admitted into the record as RESA Exhibit FL-28. The attachment is a report of

---

[50] CAUSE-PA Statement 1, at pp. 22-24, FE-PA Statement 1-R, at p. 9
[51] CAUSE-PA Statement 1, at pp. 22-24,

residential “write offs” for the years 2022-2025. It shows that nearly none of the write-offs were related to shopping customers, and nearly all were customers on default supply.

- FirstEnergy’s data responses also show that of all accounts with balances over $10,000 in its service territory, *less than 5%* of those arrearages are attributable to supplier charges.[52]

- Yet, in the West Penn Power rate district, First Energy was terminating two to three times more shopping customers as non-shopping customers in 2022-2025 in real number terms, not percentages.[53] During that period, FirstEnergy terminated over 15,000 shopping customers per year in West Penn Power rate district, compared to approximately, 6000 default service customers, even though there were 3-4 times more payment troubled default service customers than shopping customers in that rate district according to Exhibit FL-29.

These statistics, which were provided by FirstEnergy directly, raise serious questions about why so many shopping customers’ service was terminated compared to default service customers. FirstEnergy’s own statistics show that the company is

[52] See FirstEnergy response to CAUSE-PA Set I, No. 27 (Exhibit RM-8)
[53] CAUSE-PA Statement 1, at pp. 22-24,

terminating shopping customers at a MUCH higher rate than default service customers, even though default service customers have much higher percentages of payment troubled customers, write-offs, and arrearages over $10,000.

The reality is that the record includes no evidence or testimony that establishes a causal link between supplier pricing relative to the PTC and customer unaffordability or delinquencies, or how the POR proposal would somehow improve affordability or reduce delinquencies. FirstEnergy admitted in its discovery responses that prior to preparing its POR proposal, it had not done any analysis of arrearage levels, write offs, collection rates, or termination rates for shopping versus non-shopping customers.[54] FirstEnergy also admitted that it had not tracked the number of payment arrangements, disconnection notices, disconnections, or bad debt for default customers vs. shopping customers.[55] Furthermore, FirstEnergy's testimony does not quantify how much of the Company's POR-related uncollectibles are actually attributable to EGS pricing as opposed to broader economic conditions affecting all customers. Simply put, FirstEnergy has not provided any data whatsoever which demonstrates that the current POR framework is contributing to unaffordability, much less demonstrates that its proposal will in some way help affordability. But, as noted above, it is likely that if FirstEnergy's POR proposal is approved, many types of retail supplier offers will disappear from FirstEnergy's territory, to the detriment of customers, and most if not all suppliers will cease making offers in

[54] FirstEnergy Response to CAUSE-PA Set I, No. 13 (Exhibit RM-9)
[55] FirstEnergy Response to OCA Set I No. 16 (Exhibit RM-10)

FirstEnergy territory altogether, as happened in Maryland when similar changes were enacted.

## III. CONCLUSION

The R.D. completely fails to address the serious legal questions raised by the Settlement's Contract Expiration and Quarterly Affirmation proposals and fails to explain how they are not precluded as a matter of law. Both proposals seek modifications to formally promulgated Commission regulations governing EGS contracting rights and requirements statewide (54 Pa. Code. §§ 54.5 and 54.10(3)). The R.D. largely overlooks the legal requirements for obtaining a waiver of a regulation, and erroneously concludes that the proposed "waiver" is both narrowly crafted and temporary in nature, when of course it is neither. Even if the Commission determines that there are substantive policy justifications for implementing FirstEnergy's proposed Contract Expiration and Quarterly Affirmation proposals, such changes need to be implemented through amendments to the Commission's existing regulations carried out in accordance with formal rulemaking procedures. For reasons, the Non-Unanimous Settlement's Contract Expiration and Quarterly Affirmation must be rejected as a matter of law.

Even if FirstEnergy's proposals were not legally defective, the record still supports rejecting them. It must be recognized the FirstEnergy's proposals would harm customers and would actually <u>negate</u> customers' affirmative choices. If FirstEnergy's new contract renewal proposal is implemented and a supplier is not able to get a hold of the customer to obtain new affirmative consent in time, the customer would be forced away from the supplier and could actually pay a higher rate with FirstEnergy. In discovery, FirstEnergy admitted that it would move a customer to default service even if the supplier's renewal offer was lower than the PTC.[56] This admission completely undermines FirstEnergy's supposed concerns about affordability. Another problematic example is a customer who desires to use 100% renewable energy to power his or her home. If a supplier would not be able to get a hold of a customer to obtain their affirmative consent in time, FirstEnergy would force the customer onto default service, which is not 100% renewable, without their consent.[57] Both of these scenarios illustrate ways in which FirstEnergy's proposal could harm customers.[58] RESA's witness pointed out other examples of real harm that would be suffered by customers as a result of FirstEnergy's Quarterly Affirmation proposal, in the form of lost rewards and cash back.[59]

With respect to the proposed POR changes, the R.D. fails to properly consider the evidence in the record which demonstrates that the changes will have negative customer consequences in the form of fewer options to control their electricity expenses. The record includes many examples of how EGS offers under the existing POR framework have provided concrete savings to customers, and how these same products would not be offered under FE PA's new POR proposal, which will eliminate a proven option for customers to manage their electricity supply pricing and realize savings versus the PTC.

---

[56] FirstEnergy response to RESA Set I, No. 14 (Exhibit RM-11)

[57] Town Square Statement No. 1., at p. 20, lines 16-21

[58] Town Square Statement No. 1, at p. 20, lines 10-21

[59] RESA Statement No. 1, at p. 18

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

Respectfully submitted,

STEVENS & LEE, P.C.

Michael A. Gruin

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

August 31, 2026