PULP
PENNSYLVANIA
UTILITY LAW PROJECT

September 8, 2026

Via E-File

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

Re: 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

Secretary Homsher:

Please find the attached copy of the **Reply Exceptions of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** in the above noted proceeding.

As indicated on the attached Certificate of Service, service on the parties was accomplished by email only.

Respectfully submitted,

Elizabeth R. Marx, Esq.
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CC: *Office of Special Assistants (OSA) (via email ra-OSA@pa.gov)*
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 copies of the **Reply Exceptions of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54.

VIA EMAIL ONLY

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY EXCEPTIONS OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA)

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I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), by and through its counsel at the Pennsylvania Utility Law Project, files these Reply Exceptions in response to the Exceptions of the Retail Energy Supply Association (RESA), Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. (Constellation), Town Square Energy East, LLC and WGL Energy Services, Inc. (TSE/WGL), and Shipley Energy and IGS Energy (the EGS Parties) (collectively, the supplier parties). For the reasons explained below, and more thoroughly in its Main and Reply Briefs, CAUSE-PA urges the Commission to adopt Recommended Decision (RD) of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon (collectively, ALJs) without modification, thereby approving the just and reasonable terms and conditions outlined in the proposed nonunanimous Joint Settlement (Settlement).[1]

Although styled as separate Exceptions, the supplier parties collectively raise four principal arguments:

1. The RD allegedly undermines customer choice by requiring affirmative consent for supplier renewals.
2. The Commission allegedly lacks waiver authority and must proceed through statewide rulemaking.
3. The record allegedly fails to show customer harm sufficient to justify the Settlement reforms or there is a lack of causal connection between the harms shown and remedies imposed.
4. The RD allegedly approves unlawful, anti-competitive POR and retail-market reforms.

Each of these arguments was thoroughly disproven by the factual record and rebutted through briefing. Given the limited space available, and the repetitive claims of the supplier parties, CAUSE-PA does not respond separately to each of the Exception of the supplier parties. Instead,

[1] RD at 195-205, 227-229; CAUSE-PA MB at 7-12, 20-29; CAUSE-PA RB at 17-43.

it addresses the common substantive themes advanced throughout the supplier parties' Exceptions, identifying at the outset of each Reply Exception which of the supplier parties' Exceptions are addressed, and demonstrates why the RD correctly rejected those arguments based on substantial record evidence and applicable law.

As explained below, and more thoroughly through briefs, ALJs Hoyer and Gannon appropriately rejected the supplier parties' unsubstantiated arguments and approved the proposed settlement based on substantial record evidence and sound application of applicable law. As such, the Commission should uphold the RD and affirm the proposed Settlement without amendment.[2]

II. REPLY EXCEPTIONS

A. <u>CAUSE-PA Reply Exception 1</u>: The Choice Act permits competition to bend when necessary to protect consumers, and supports the reforms recommended for approval in this case.

Reply to:

- RESA Exceptions 1, 2 & 3
- Constellation Exception 1
- TSE/WGL Exception 3
- EGS Parties Exceptions 1, 2 & 3

As an overarching premise, the supplier parties each advance broad legal theories that attempt to isolate and exalt competition from the rest of the Choice Act.[3] But Commonwealth Court precedent confirms that the Choice Act "does not demand absolute and unbridled competition."[4] To the contrary, it is "well settled that competition must bend to address 'other important concerns' – including the panoply of policy priorities, consumer protections, and

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[2] RD at 198-205, 227-229; CAUSE-PA MB at 8-12, 20-29; CAUSE-PA RB at 21-43.

[3] See RESA Exc. at 6-12 14-20 (arguing the Commission must prioritize preservation of competition and may not impose restrictions affecting competitive supply); EGS Parties at 1-2, 3-9 (arguing non-regulation of supplier pricing control the analysis); Constellation Exceptions at 1-4 (arguing the Choice Act's central concern is preservation of supplier choice, above all other considerations); TSE/WGL Exc. at 21 (arguing that the Commission has an "obligation to ensure the retail market functions effectively" and that this obligation requires the Commission to maintain FE PA's POR program without amendment.)

[4] CAUSE-PA v. Pa. PUC, 120 A.3d 1087, 1101 (Pa. Commw. Ct. 2015).

obligations enshrined in the Choice Act and the Public Utility Code."[5] The RD properly applied that principle to the proposals contained in the Settlement.[6]

A restriction on competition is justified when there is harm associated with competition and no reasonable alternative on the record capable of addressing that harm.[7] With regard to each of the reforms recommended for approval in this case, the RD found substantial evidence of harm and concluded that that no reasonable alternative exists on the record to mitigate that harm.[8]

As an initial matter, the proposals contained in the Settlement and recommended for approval in the RD will change voluntary market enhancement programs and existing shopping procedures *but are not anti-competitive and do not constrain competition*.[9] To the contrary, the reforms will strengthen the competitive market, not weaken it – restoring trust and accountability in the marketplace and eliminating supplier subsidies paid for by residential ratepayers in the form of higher uncollectible expenses.[10] Under each proposal, customers will retain direct access to the market, and are free to choose any product – from any supplier – without restriction.[11] As such, there is no requirement that the Commission consider less restrictive proposals, only that the Commission ensure the proposals are just, reasonable, and supported by substantial evidence.[12]

Even if the proposals were determined to pose a potential restraint on competition, there is nevertheless ample record evidence to support each proposal and there are no viable alternatives on the record that are capable of addressing the substantial documented harm in this case. The supplier parties do not identify any concrete, implementable alternatives capable of addressing the

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[5] CAUSE-PA MB at 4; CAUSE-PA v. Pa. PUC, 120 A.3d at 1103; RD at 7-8, 245-46.
[6] RD at 198-200, 245-46.
[7] RESA v. Pa. PUC, 185 A.3d 1206, 1228 (Pa. Commw. Ct. 2018); CAUSE-PA MB at 11; CAUSE-PA RB at 7-8, 18-19.
[8] RD at 198-200, 245-46.
[9] RD at 162, 196-197, 208, 227-228.
[10] CAUSE-PA RB at 18.
[11] RD at 162, 196-197, 208, 227-228.
[12] CAUSE-PA v. Pa. PUC, 120 A.3d at 1107-1108; RESA v. Pa. PUC, 185 A.3d at 1227.

harms identified by the RD.[13] Instead, as addressed more thoroughly in section B.ii below, the supplier parties either deny the existence of any harm or otherwise blame other factors unrelated to shopping. To the extent the supplier parties acknowledge the existence of any harm, they uniformly attempt to recycle the same recommendations that previously failed to resolve demonstrated harm in the past,[14] including vague proposals to conduct additional stakeholder collaboratives, enhance customer education, improve supplier participation, and further study the market.[15] These "alternatives" fall woefully short of identifying any specific, implementable reform capable of addressing the high termination rates of shopping customers and the excessive rates of shopping-related uncollectible expense borne by other ratepayers.

The supplier parties cannot defeat the reasonable reforms outlined in the Settlement by gesturing toward undefined future collaborations or hypothetical reforms. The Commission need only evaluate alternatives advanced *on the record* that are *capable of addressing the proven harm*.[16] Despite RESA's assertions to the contrary, there is no obligation on the parties advancing a particular proposal, or on the Commission in reviewing a particular proposal, to explore the potential existence of other alternatives not proposed within the record.[17]

Ultimately, the RD correctly concluded that the supplier parties did not carry their burden to establish that the status quo, further study, or speculative future reforms would protect customers

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[13] RESA MB at 30-31; RESA Exc. 3; CAUSE-PA RB at 14-16, 40-42; RD at 15-16, 162-163, 244, COLs 34, 46; FOFs 86-88.
[14] RD at 199 ("Significantly, the record shows that the Company has already pursued other alternatives to address the demonstrated harms, including the Company's existing POR clawback mechanism that has been in place since 2017 and collaborative review processes and improved customer education efforts undertaken following approval of FirstEnergy's DSP in 2022.")
[15] RESA MB at 30-31; RESA Exc. 3; CAUSE-PA RB at 14-16, 40-42; RD at 15-16, 162-163, 244, COLs 34, 46; FOFs 86-88.
[16] CAUSE-PA RB at 7-8; RESA v. Pa. PUC, 185 A.3d at 1228.
[17] CAUSE-PA RB at 8; RESA Exc. at 21.

from the documented harms.[18] The Commonwealth Court's decisions do not require the Commission to tolerate ongoing customer harm while waiting for speculative future solutions. As such, the Commission must affirm the RD's findings that each of the proposed reforms contained in the Settlement and recommended for approval in this case represent a reasonable, narrowly tailored response to the record evidence.[19]

B. CAUSE-PA Reply Exception 2: The revised end-of-contract procedures requiring affirmative consent are necessary and lawful consumer protection, narrowly tailored to address clear evidence of harm.

Reply to:

- RESA Exceptions 1, 2, 3, & 4
- Constellation Exceptions 1, 2, 3, & 4
- TSE/WGL Exceptions 1, 3, & 4
- EGS Parties Exceptions 1, 2, & 3

i. The RD correctly treats affirmative consent – not passive inaction – as the appropriate measure of customer choice.

Through Exceptions, the supplier parties argue that requiring suppliers to obtain affirmative consent before rolling customers into a new contract, with new terms selected by the supplier, is anti-competitive and violates customer choice.[20] The RD correctly found the opposite.

As the ALJs explained, "the Settlement's modification to the consequence when a residential shopping customer 'does nothing' at contract expiration is a reasonable and narrowly targeted measure to address the harms established on the record while preserving customer choice

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[18] See 66 Pa. C.S. § 332(a); RESA v. Pa. PUC, 185 A.3d 1206, 1228 (Pa. Commw. Ct. 2018); CAUSE-PA MB at 3-4, 10-12; CAUSE-PA RB at 7-9, 40-41.

[19] RD at 198-205, 227-229; CAUSE-PA MB at 8-12, 20-29; CAUSE-PA RB at 17-21, 25-30, 33-42.

[20] RESA argues that defaulting a customer to default service, absent affirmative consent to new contract terms, "displaces the customer's previously exercised supplier choice." (RESA Exc. 1-2, at 2-4, 8-20.) The EGS Parties likewise contend that the proposal "contravenes the statutory mandate that only the customer may choose — and change — their electric generation supplier," while TSE/WGL argue that the RD would impose a new "affirmative consent" requirement that would "drastically and negatively alter the competitive retail market framework" in FirstEnergy's territory. (EGS Parties Exc. 1, at 1-5; TSE/WGL Exc. 1, at 2-4, 5-15.) Finally, Constellation asserts that customer notice is not consent and that by returning a customer back to default service at the end of the contract term within the customer affirmatively asserting that they wish for this to occur at that time violates Section 2807(d)(1) of the Public Utility code. (Constellation Exc. 1 at 4).

and direct access to the retail markets."[21] That conclusion is firmly grounded in the record and in the Choice Act, which "does not demand absolute and unbridled competition," and instead requires competition to "bend" when necessary to address "other important concerns" embedded in the Public Utility Code.[22] The Choice Act promotes retail access "while at the same time ensuring appropriate safeguards to ensure energy remains universally accessible and affordable to all consumers."[23] The Act expressly recognizes that "[e]lectric service is essential to the health and well-being of residents, to public safety and to orderly economic development," and further provides that the Commonwealth "must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service."[24]

That statutory framework matters. This case is not about whether customers may choose competitive supply. They may. It is also not about whether the EDC and EGS must honor those choices. They must. The Settlement is not the negation of customer choice at the end of term, it is a clarification of what happens when a customer *does not make a* choice at the end of term. Under the current paradigm, a supplier may continue charging a customer new or changed rates after expiration of a fixed contract, based only on the customer's failure to act. This upends choice. As CAUSE-PA explained through briefing: "When a customer consents to a new contract, they agree to a certain price for a fixed duration of time. They have no idea what the price will be at the end of their contract term."[25] The "provision of written disclosure at the end of the contract is not akin to affirmative choice or consent."[26] Indeed, "*notice is not consent*."[27] What the settlement requires

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[21] RD at 197-200; CAUSE-PA MB at 20-23; CAUSE-PA RB at 21-26.
[22] CAUSE-PA v. Pa. PUC, 120 A.3d at 1101, 1103; 66 Pa. C.S. §§ 2802, 2804, 2807, 2809; RD at 7-8, 245-46.
[23] CAUSE-PA MB at 4; 66 Pa. C.S. §§ 2802(9)-(10), 2803, 2804(9), 2807(d), 2809(e).
[24] 66 Pa. C.S. § 2802(9)-(10); CAUSE-PA MB at 5-6.
[25] CAUSE-PA RB at 22.
[26] CAUSE-PA RB at 22.
[27] CAUSE-PA RB at 22; CAUSE-PA St. 1-R at 25-26 (emphasis added).

is that EGSs who enter new contracts with customers or renew existing contracts with customers include a term in those contracts which indicates that if the customer does not respond to a notice of renewal, the EGS will do the only rational thing: it will return the customer to default service preserving the right of the customers to change suppliers when they see fit to do so, which includes the right to continue with their existing supplier based on an affirmative election to remain under the offered terms. It is a strengthening of consumer protection **and** choice.

The supplier parties' contrary position transforms a customer's original enrollment into perpetual authorization for future supplier-selected products, pricing structures, and renewal terms. The RD correctly rejected that premise. Under the Settlement, customers remain free to select any licensed supplier, enroll in any supplier product, remain with their current supplier, switch suppliers, or return to competitive supply at any time.[28] What changes is only the consequence of silence at the end of a fixed contract. Rather than being passively rolled into whatever new terms the supplier offers, the customer who takes no action "would literally 'default' to default service."[29]

Returning a residential customer to default service after their contract term has expired, absent affirmative consent to a new supplier contract, is not "slamming" and does not violate Section 2807(d)(1).[30] That section of code only requires oral confirmation or written evidence of the customer's consent and is applicable to EDCs, not suppliers. The provisions of the Settlement require suppliers to return the customer at the end of their fixed contract term to default service only in cases where the customer takes no action and, as such, does not consent to the suppliers' new terms.[31] The Settlement does not move a customer from one competitive supplier to another.

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[28] RD at 196-200.
[29] CAUSE-PA MB at 21; CAUSE-PA St. 1-R at 24.
[30] 66 Pa C.S. § 2807(d)(1).
[31] RD at 196

Default service is the statutory backstop available when a customer has **not** selected a competitive product – it is not a supplier-offered service.[32] The customer's choice remains paramount because the customer may affirmatively remain with the same EGS, select a different EGS, or take default service.[33]

The Commission must reject the supplier parties' attempt to elevate passive customer inaction over affirmative customer choice and affirm the ALJ's well-supported findings that there is a direct nexus between the lack of affirmative consent to contract renewal and the overwhelming evidence of excessive charges, higher termination rates, and higher uncollectible expenses.

ii. The RD correctly relied on extensive record evidence that clearly established a direct causal link between high supplier pricing, disproportionately high terminations and uncollectible expenses, and lack of informed consent.

As mentioned above, the supplier parties argue that the record fails to establish causation between shopping outcomes, customer harm, and proposed end-of-contract procedures recommended in this case.[34] The RD properly evaluated the evidence and reached a different conclusion. The ALJs found that "the proponents of the proposed changes to the Supplier Tariff have established actual harm, with substantial record evidence."[35] The RD further found "a direct nexus between continual supplier pricing above the price to compare and higher involuntary termination rates, higher uncollectible expenses, and rising customer complaints against EGSs in

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[32] 66 Pa. C.S. §§ 2803, 2807(e); RD at 239-40; CAUSE-PA RB at 21.
[33] RD at 196-200.
[34] RESA Exc. 4; Constellation Exc. 4; CAUSE-PA MB at 8-12; CAUSE-PA RB at 25-30. RESA argues that "observed disparities" in termination rates and uncollectible expenses for shopping customers do not prove a causal nexus with higher prices in the competitive market. RESA Exc. 4, at 28-33. The EGS Parties make the same point by asserting that the RD substitutes "the size of the aggregate figure for a finding of causation," while TSE/WGL contend that the RD improperly accepts "cherry-picked data" and fails to consider other collections and arrearage metrics. EGS Parties Exc. 1.C, at 5; TSE/WGL Exc. 4, at 27-33.
[35] RD at 198.

FirstEnergy's service territory."[36] This conclusion was inherently reasonable and supported by substantial record evidence. A brief review of that evidence is instructive.

Contrary to the suppliers' claims, the record did not consist of isolated data points, it includes longitudinal pricing data spanning a 100-month period, together with extensive termination data, complaint data, uncollectible expense evidence, and evidence of disproportionate harm to confirmed low-income customers.[37] The magnitude and persistence of the pricing evidence is striking: Residential shopping customers were charged, in the aggrega more than the default service price every month for a 100-month period, resulting in more than $888 million in aggregate excess charges.[38] The supplier parties' effort to dismiss 100 consecutive months as a "point-in-time" comparison is meritless.

The termination evidence confirms the harm of excess pricing, establishing a direct causal link between excessive supplier pricing and severe harm to shopping customers and proving that the current shopping procedures are inadequate to support informed customer choice. In 2025, residential shopping customers had service terminated at rates between 14-22% across FE PA's four divisions, compared to between 1-3% for residential default service customers.[39] Nobody chooses to be involuntarily terminated, and it strains credulity to suggest otherwise.[40] The fact is higher prices increase the risk of termination and implicate the Commission's statutory duties under the Choice Act to maintain customer protections, service quality, universal service, and just and reasonable service.[41]

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[36] RD at 198-99.
[37] CAUSE-PA MB at 8-12; CAUSE-PA RB at 17-19, 25-28; RD at 165-67, 198-99.
[38] CAUSE-PA MB at 8-9; CAUSE-PA RB at 17, 26-27; RD at 198.
[39] CAUSE-PA MB at 9, 22; CAUSE-PA RB at 17; RD at 166, 198.
[40] CAUSE-PA RB at 27.
[41] 66 Pa. C.S. §§ 2802(9)-(10), 2803, 2804(9), 2807(d), 2809(e).

The uncollectible-expense evidence likewise supports the RD, further underscoring the direct nexus between excessive prices and harm to consumers. In 2025, shopping-related uncollectible expenses were more than 2x higher in Met-Ed and West Penn and more than 3x higher in Penelec and Penn Power compared to default service uncollectible expenses.[42] On a per-customer basis, POR-related uncollectible expenses ranged between $23-$38, compared to $8-$15 for default service uncollectible expenses.[43] These disproportionately higher uncollectible expenses are not absorbed by suppliers; they are recovered from customers.[44]

The record also demonstrated disproportionate harm to low income households. Confirmed low income shopping customers were consistently charged substantially higher premiums than other residential shopping customers – ranging between 37-56% above the applicable default service rate.[45] These customers are least able to absorb excessive energy costs, yet they experienced some of the most pronounced adverse outcomes identified in this proceeding.[46]

The RD properly found the extensive evidence of harm to be credible, substantial, persuasive, and directly linked to the proposals recommended for approval in this case.[47]

iii. The supplier parties do not credibly dispute the underlying data evidencing substantial harm.

The supplier parties repeatedly attack the extensive shopping data presented in this case, without credibly rebutting it. RESA, TSE/WGL, Constellation, and the EGS Parties devote substantial portions of their Exceptions to criticisms of the extensive pricing, collection, arrearage,

[42] CAUSE-PA RB at 6-7, 17; CAUSE-PA St. 1-R at 17-18.
[43] CAUSE-PA MB at 9; CAUSE-PA RB at 37-38; RD at 227.
[44] CAUSE-PA MB at 9-10, 24-26; RD at 227-29.
[45] CAUSE-PA MB at 8-10; CAUSE-PA RB at 14-15.
[46] CAUSE-PA MB at 10-14; CAUSE-PA RB at 14-15.
[47] RD FOFs 90, 94-99, 102-105; RD at 198-205, 227-229; CAUSE-PA MB at 8-12; CAUSE-PA RB at 25-30, 33-42.

and complaint data.[48] However, none of these parties offered persuasive competing analyses demonstrating that the evidence of harm is incorrect. Nor did they provide any alternative explanations that credibly account for the magnitude and persistence of the stark disparities in pricing, terminations, uncollectible expenses, and complaints associated with shopping identified in the record.

Notably, RESA asserts that none of the data, "standing alone, establishes that above-PTC pricing caused the other observed differences."[49] This point underscores the fallacy of the supplier parties' arguments. CAUSE-PA and the other settling parties did not rely on any single data point, "standing alone", to prove the need for the proposed reforms. To the contrary, the cumulative data summarized above – including higher aggregate supplier pricing every month for 100 months, shockingly high rates of involuntary termination and uncollectible expenses compared to default service customers, higher prices for low income customers, and high rates of consumer complaints – stand together to prove that the proposed reforms recommended for approval in this proceeding are necessary to prevent certain and severe harm to all residential consumers.

While the constraint on time and space in these limited Reply Exceptions do not allow CAUSE-PA to fully respond to each of the supplier parties' restated arguments, CAUSE-PA summarizes a few of its prior responses to the supplier parties' arguments and incorporates the full scope of its prior arguments by reference.[50]

First, RESA quite strangely asserts that the termination data established only "an observed difference between customer populations" – not a causal link.[51] In effect, RESA asks the

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[48] RESA Exc. at 22-26, 28-32; TSE/WGL Exc. at 27-32; Constellation Exc. at 5-6; EGS Parties Exc. at 5, 6, 9; see also CAUSE-PA MB at 8-12; CAUSE-PA RB at 25-30, 33-42.
[49] RESA Exc. at 30.
[50] CAUSE-PA RB at 18-19, 25-28, 32-33, 36-39
[51] RESA Exc. at 31-32. Constellation makes a similar argument when it says that the record does not establish that customers experienced those outcomes because they choose to remain with their chosen supplier at the end of their contract term. Constellation Exc. at 5.

Commission to assume that some unidentified characteristic of shopping customers, rather than the substantially higher prices charged, explains why shopping customers experience termination rates that are many multiples higher than default service customers.[52] Despite the absurdity of RESA's statement (or perhaps because of it), RESA offers no alternative explanation for the disparity, and does not rebut the extensive evidence linking charges higher than the PTC to nonpayment, debt accumulation, involuntary termination, and the severe health and safety consequences that follow.[53] The RD correctly found a direct causal nexus between these outcomes. Whatever other differences may exist between shopping and default service customers, the cost of service and ability to pay for that service are the controlling factors driving higher termination rates. The Commission need not disregard common sense, the record evidence, or basic economics to accept RESA's conjecture that some unidentified factor explains the disparity.

With regard to pronounced disparities in uncollectible expense rates among shopping accounts, RESA repeats its prior arguments that this evidence should be ignored because it involved accounting methodologies and multiple datasets "measuring different things."[54] CAUSE-PA explained through briefing that "there is nothing to suggest that the accounting methodology used to track uncollectible expenses for default service and POR-related accounts is flawed."[55] The mere existence of multiple collections datapoints that measure different aspects of FE PA's collections activities does not invalidate the specific datapoints relied upon, particularly where EDCs are required to track collections data in multiple ways by Commission regulation.[56]

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[52] CAUSE-PA RB at 9; CAUSE-PA St. 1 at 15-25; CAUSE-PA St. 1-R at 13-19.

[53] The record is clear: "Energy insecurity – or the inability to afford basic energy services – threatens stable and continued housing, employment, and education; has substantial and long-term impacts on mental and physical health; creates serious risks to the household and the larger community; and negatively impacts the greater economy." CAUSE-PA St. 1 at 12-14.

[54] RESA Exc. at 30.

[55] CAUSE-PA RB at 36.

[56] 52 Pa. Code § 54.75; CAUSE-PA RB at 28, 36-37.

TSE/WGL's attempt to blame higher shopping terminations on alleged discriminatory termination practices is also unsupported.[57] As CAUSE-PA previously explained, this theory was never advanced through testimony, is not supported by record evidence, and was never tested through cross-examination.[58] Although TSE/WGL point to raw counts of customers in arrears, those figures ignore the fact that substantially fewer customers shop than take default service. The relevant comparison is therefore not total customer counts, but proportional outcomes. When viewed on that appropriate mathematical basis, the data is clear that shopping customers experienced disproportionately higher termination rates and generated disproportionately higher uncollectible expenses than default-service customers.[59] The RD correctly credited the record evidence and expert analyses demonstrating those disparities and properly declined to rely on unsupported assertions introduced through briefing.

The supplier parties also generally argue that customers may choose supplier products for non-price reasons.[60] This fact does not rebut the record evidence of aggregate harm and does not explain why termination rates and uncollectible expenses are disproportionately higher for shopping customers. As explained, it lacks credibility to suggest that a consumer would knowingly and voluntarily choose a higher price that they cannot afford to pay when the consequence is involuntary termination of basic, life-essential electricity to their home.[61] Nothing in the Settlement prohibits value-added products, renewable products, long-term fixed products, or

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[57] TSE/WGL Exc. at 30.
[58] CAUSE-PA RB at 28. In fact, TSE – which sponsored expert witness testimony in the case – "provided no rebuttal or surrebuttal testimony at all" responding to CAUSE-PA, OCA, and FirstEnergy's analysis of the termination data.
[59] RD FOFs 97-99, 102-105.
[60] See, e.g., RESA Exc. at 30-33; Constellation Exc. at 5-6; EGS Parties Exc. at 5; TSE/WGL Exc. at 22.
[61] CAUSE-PA RB at 27.

prices above the default service price.[62] Customers who value those products remain free to affirmatively choose them.

Thus, as explained more thoroughly in briefing, none of the arguments advanced by the supplier parties credibly rebut the overwhelming evidence of higher prices in the competitive market, which are driving high termination rates and uncollectible expenses and are causally linked to the lack of appropriately informed consent.

iv. FE PA has met its burden of proof, based on substantial record evidence, that waiver of section 56.10(3) is supported by substantial evidence and firmly in the public interest.

The supplier parties assert that any modification to existing renewal requirements must occur through statewide rulemaking.[63] The RD properly rejected these arguments.[64] The Commission may waive its regulations when the waiver is supported by the facts presented and serves the public interest.[65] A waiver request must identify the petitioner's interest, the specific waiver requested, the statutory or other authority involved, and the facts supporting the request.[66]

FE PA satisfied that standard. As CAUSE-PA explained through briefing, "there is a clearly defined legal standard for a regulated entity to request waiver of a rule or regulation as applied to that entity, which FE PA has followed."[67] The request is not a repeal or amendment of statewide regulations; it is a utility-specific waiver based on the "documented, clear factual record developed

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[62] RD at 199, 229.

[63] For its part, TSE/WGL assert that FirstEnergy's proposal is not a waiver at all, but an attempt to "completely override" the existing contract renewal regulation and "replace it with a new contract renewal framework" applicable only in FE PA's service territory. TSE/WGL Exc. 1, at 5-15. The EGS Parties argue that "a regulation may be waived under § 5.43(a); a statute may not," EGS Parties Exc. 1.A, at 3-4, and RESA similarly claims the RD improperly uses a utility-specific default service proceeding to alter statewide retail-market rights and obligations. RESA Exc. 1 and 3, at 9-10, 21-28. Constellation asserts that the Settlement effectively rewrite a statewide consumer-protection regulation through a utility specific proceeding. Constellation Exc. 3 at 4.

[64] RD at 195-198; CAUSE-PA MB at 7, 20-22; CAUSE-PA RB at 23-25.

[65] 66 Pa. C.S. § 501(a); 52 Pa. Code § 5.43(b); Duquesne Light Petition for Waiver of the Three Business Day Switching Requirements Under 52 Pa. Code § 57.174, Docket No. P-2014-2448863, at 8 (Order entered Dec. 4, 2014); CAUSE-PA MB at 7, 20-21; CAUSE-PA RB at 23-25.

[66] 52 Pa. Code § 5.43(b); CAUSE-PA MB at 7.

[67] CAUSE-PA RB at 23-24.

in this case."[68] It is also temporary, as "FE PA's waiver would be subject to review in FE PA's next DSP."[69]

The ALJs agreed and found that FE PA is "affected by the current protocol given the higher shopping customer uncollectible expense, increased termination activity, and rising customer complaints against EGSs in its territory," and that waiver is needed "to avoid a conflict between its Supplier Tariff provisions and Section 54.10(3)."[70] The RD further found that the waiver is "limited to a narrow and specific subset of FirstEnergy customers" and "temporary in nature" because it applies only during DSP VII, from June 1, 2027 through May 31, 2031, and will be reviewed in the next DSP.[71]

Contrary to the assertions of the supplier parties, the requested waiver does not violate sections 2806(a) or 2807(d)(1) of the Choice Act.[72] The "ultimate choice of the electric generation supplier" will still rest with the consumer consistent with section 2806(a), and FE PA will still be obligated to obtain affirmative consent to switch a customers' supplier consistent with section 2807(d)(1).[73] As discussed above, returning a customer to default service absent affirmative consent to remain with a supplier at the end of a contract term or affirmation of desire to remain on variable rate is not equivalent to switching a customers' supplier.[74] In fact, the record strongly supports a conclusion that the Settlement terms approved in the RD will further bolster choice –

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[68] CAUSE-PA RB at 24.
[69] CAUSE-PA RB at 24.
[70] RD at 196-97.
[71] RD at 197.
[72] EGS Parties Exc. 1.A, at 3-4; RESA Exc. 1 and 3, at 9-10, 21-28.
[73] 66 Pa. C.S. §§ 2806(a), 2807(d)(1).
[74] CAUSE-PA RB at 21-22, 24. As explained in CAUSE-PA's Reply Brief, "Pursuant to the Choice Act, an EDC may not change a customer's *supplier* absent their express consent. Default service, however, is not a competing supplier. It is a required backstop available when a customer has not selected a competitive product." CAUSE-PA RB at 21 (emphasis added); 66 Pa. C.S. §§ 2807(d)(1), 2807(e).

ensuring that customers revert to default service absent affirmative consent to new supplier terms and conditions at the end of a contract term.[75]

The Settlement terms do not permit FE PA to switch a customers' supplier without affirmative consent, nor do they in any way bind other EDCs or impact supplier operations in other service territories. Moreover, the requested waiver is subject to further review in FE PA's next DSP and does not eliminate the Commission's ability to independently evaluate all future waiver requests, including any potential requests for renewal of the narrow and limited waiver recommended for approval in this case.

Finally, the Commission should not entertain the supplier parties' request to defer waiver discussions to some undefined future statewide proceeding based on FE PA's narrow request for regulatory waiver. Customers in FE PA's service territory are facing "real, current, and ongoing" harm, and the supplier parties should not be permitted to "ensnare meaningful consumer protections in a lengthy statewide policy inquiry."[76] As the RD observed, default service proceedings and supplier coordination tariffs are already EDC-specific.[77] The Commission should not ignore the evidentiary record before it in this case merely because suppliers would prefer delay.

[75] See supra Section II.B.i; CAUSE-PA RB at 21; see also RD at 196-197, 208.
[76] CAUSE-PA RB at 23.
[77] RD at 197.

C. CAUSE-PA Reply Exception 3: The proposed purchase of receivables (POR) program reforms are necessary and lawful consumer protection, narrowly tailored to address clear evidence of harm.

Reply to:

- RESA Exceptions 1, 2, 3, & 4
- TSE/WGL Exceptions 3 & 4
- EGS Parties Exception 3

The supplier parties' Exceptions regarding the proposed POR program reforms largely recast arguments already rejected by the RD and misconstrue the nature and scope of the terms.[78] RESA argues that conditioning FE PA's POR eligibility on supplier prices improperly turns the PTC into "the price threshold for access to Commission-recognized market infrastructure" and threatens the "continued viability" of the competitive market.[79] TSE/WGL similarly claim POR is "vital to an effective retail electricity market" and that FE PA's proposal would "likely result in most EGSs exiting the market altogether," while the EGS Parties characterize the POR restriction as "discriminatory under 66 Pa. C.S. § 1502" and unauthorized indirect rate regulation.[80] These claims should be rejected.

The RD correctly grounded its POR analysis in the operation of the program and the harm documented on the record. That harm is extensive. On average from 2022 through 2025, while the current POR program was in effect, approximately 40% of residential generation-related uncollectible expense was attributable to purchased EGS receivables, even though only 18% of residential customers were shopping.[81] Average uncollectible expense per residential shopping customer was $22.83, nearly 3x the average $7.82 in uncollectible expense per residential default-service customers. The clawback was ineffective at reducing disproportionately high uncollectible

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[78] See RD at 227-229; CAUSE-PA MB at 24-29; CAUSE-PA RB at 33-43. Note that Constellation did not file any direct Exceptions regarding POR.
[79] RESA Exc. 1-3, at 1-4, 21-28.)
[80] TSE/WGL Exc. 3, at 18-27; EGS Parties Exc. 3, at 7-9.
[81] RD FOFs 97, 102-105.

expenses, as suppliers have continued charging excessive rates and only a small fraction of resulting write-offs were recovered through the provision.[82]

In reaching their decision, the ALJs correctly concluded that "POR is a voluntary program that, currently, allows unrestricted access to guaranteed upfront payment of the face value of the participating EGS's accounts receivable."[83] The RD further found that FE PA proposed to limit POR eligibility "responsive to a documented concern about the levels of residential generation uncollectible expense that are attributable to purchased EGS accounts receivable, even after application of the clawback mechanism."[84] Indeed, the Settlement does not eliminate POR, prohibit suppliers from serving customers, cap supplier rates, or bar any competitive product. It simply prevents suppliers from shifting the credit and collection risk associated with excessive supplier pricing onto FE PA and its customers.

These substantial factual findings provided an appropriately expansive evidentiary basis for the RD's determination that reform of the POR program – beyond the clawback provision – is necessary prevent ongoing harm to FE PA's residential customers.[85]

i. POR is a voluntary program, not a supplier entitlement.

The supplier parties repeatedly describe POR as though suppliers possess a statutory right to utility purchase of receivables. They do not.[86] The Choice Act permits consolidated billing but expressly provides that an electric distribution company may not be required to forward payment to entities on whose behalf it bills before receiving payment from customers. CAUSE-PA argued that this provision confirms that suppliers have no statutory entitlement to guaranteed utility

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[82] RD FOFs 97, 102-105.
[83] RD at 227.
[84] RD at 227.
[85] RD at 227-229; COLs 35, 42, 46.
[86] RD at 227-229; CAUSE-PA MB at 24-29; CAUSE-PA RB at 33-43.

purchase of receivables, and that FE PA may condition voluntary POR participation to protect customers from excessive cost shifting.[87] The RD properly recognized this principle.[88]

ii. The POR reforms do not regulate competitive prices.

The EGS Parties and RESA characterize the revised POR requirements as impermissible regulation of competitive generation prices.[89] That characterization is incorrect.[90] The POR reforms do not prohibit suppliers from charging prices above the default service price; do not limit customer access to competitive suppliers; do not prohibit product innovation; do not prohibit value-added offerings; and do not eliminate competitive supply.[91] The reforms simply establish conditions for participation in a voluntary utility receivables-purchase program and, as such, are appropriately designed to address financial risk allocation rather than supplier price regulation.[92]

The supplier parties repeatedly invoke the Commission's historical support for POR while ignoring the accompanying record evidence demonstrating that the current structure is producing materially different outcomes than those anticipated when POR was originally implemented.[93] As CAUSE-PA has previously explained, when POR was first advanced through the Retail Market Investigation, the Commission lacked the benefit of more than a decade of actual data regarding supplier pricing, residential terminations, and uncollectible expense outcomes.[94] The RD properly relied upon the data now available, and approved reasonable restrictions proposed by FE PA for its voluntary market enhancement programming.[95]

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[87] See 66 Pa. C.S. § 2807(c)(3); CAUSE-PA MB at 24-29; CAUSE-PA RB at 33-43.
[88] RD at 227-229; CAUSE-PA MB at 24-29; CAUSE-PA RB at 33-43.
[89] See EGS Parties Exc. at 7-8; RESA Exc. at 4.
[90] RD at 227-229; CAUSE-PA MB at 24-29; CAUSE-PA RB at 33-43.
[91] RD at 227-228.
[92] RD at 227-229; CAUSE-PA MB at 24-29; CAUSE-PA RB at 33-43.
[93] RESA Exc. 3; TSE/WGL Exc. 3; EGS Parties Exc. 3.
[94] CAUSE-PA MB at 27-28; CAUSE-PA RB at 42.
[95] RD at 227-229.

iii. The reforms to FE PA's POR program appropriately address documented disparities in supplier-related uncollectible costs.

The record evidence demonstrated clearly that shopping-related uncollectible costs are disproportionately higher than those associated with default service, and that those costs are ultimately borne by other customers.[96] The revised POR provisions reasonably align supplier participation with supplier responsibility, insulating other customers from exposure to higher rates, while continuing to preserve customer access to competitive markets and all of the services offered by suppliers.[97]

D. <u>CAUSE-PA Reply Exception 4:</u> The quarterly affirmation requirement for variable rates is a necessary and lawful consumer protection, narrowly tailored to address clear evidence of harm.

Reply to:

- RESA Exceptions 1, 2, 3, & 4
- TSE/WGL Exception 2
- EGS Parties Exceptions 1 & 2
- Constellation Exception 3

The supplier parties' Exceptions regarding the quarterly affirmation requirement for variable rate contracts rest on the same flawed premise as their objections to affirmative consent at contract expiration: That a customer's initial enrollment can substitute indefinitely for knowing consent to future supplier-selected rates.[98] The RD properly rejected that premise. The Settlement requires EGSs serving residential customers on month-to-month variable-rate products to provide a quarterly attestation of affirmative customer consent.[99] That requirement is a reasonable, targeted consumer protection designed to address the same record evidence of excessive residential shopping prices, elevated termination rates, and increased uncollectible expenses discussed above.

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[96] RD FOF at 97, 102-105

[97] RD FOF at 105.

[98] RESA Exc. at 15, 18; EGS Parties at 6-7; TSE/WGL Exc. at 16-18.

[99] RD at 200-09, 214-15.

The RD correctly recognized that the quarterly affirmation requirement "would supplement, rather than conflict with existing Commission regulations."[100] Existing disclosure rules may notify customers that rates can change, but they do not require customers to periodically confirm that they still wish to remain on a product whose price is determined by the supplier and may fluctuate substantially over time. As the RD explained, variable-rate products can expose customers to prices that "change by the hour, day, or month, based on market conditions," and disclosure statements do not necessarily provide customers with the supplier's specific variable pricing methodology.[101] In this context, periodic affirmation is not a restriction on choice; it is a mechanism to ensure that the choice remains knowing, active, and current.

Through briefing, CAUSE-PA explained that "[t]he Commission's regulations were last revised more than a decade ago, and have since proven insufficient to stem certain, substantial, and ongoing harm to consumers based on the record in this case."[102] CAUSE-PA further explained that "increased disclosures and education are no longer viable alternatives, as they have not worked to address the root cause driving higher rates and resulting high terminations and uncollectible expenses."[103] After "12 years and $888 million in documented harm," CAUSE-PA correctly urged that "it is time to implement more definitive rules to ensure consumers knowingly choose and affirmatively consent to variable rates."[104]

The supplier parties' arguments that quarterly affirmation will create customer confusion, operational burdens, or market disruption are speculative and unsupported.[105] The RD credited FE

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[100] RD at 214.
[101] RD at 200-201
[102] CAUSE-PA RB at 33.
[103] CAUSE-PA RB at 33.
[104] CAUSE-PA RB at 33.
[105] RESA Exc. at 15, 18; EGS Parties Exc. at 6-7; TSE/WGL Exc. at 16-18.

PA's evidence that implementation costs would be minimal because "the attestation of affirmative customer consent will be processed through electronic data interchange transactions and does not require any system changes."[106] The supplier parties asserted generally that it would cost more, but did not quantify contrary costs or show that the requirement is unworkable.[107] Their preference for the status quo is not evidence that the Settlement's consumer protection provisions are unreasonable.

Nor does the quarterly affirmation requirement prohibit variable-rate products. Suppliers remain free to market and offer month-to-month variable-rate products. Customers remain free to choose them. The Settlement simply requires periodic confirmation that the customer still wants to remain on that form of service. While a customer may knowingly enroll in a variable-rate product initially, that does not mean the customer knowingly chooses to remain on that product forever while prices change over time.[108] The RD correctly found that quarterly affirmation will "help to ensure that customers periodically and knowingly choose to remain on" a variable rate.[109]

The RD's conclusion should therefore be affirmed. "After 12 years and $888 million in documented harm to FirstEnergy customers," the ALJs found it "in the public interest to require that suppliers charging a month-to-month variable rate attest to whether the consumer provided affirmative consent to be charged in that manner."[110] That finding is supported by substantial evidence, consistent with the Choice Act's customer-protection and universal-service mandates, and squarely within the Commission's authority.[111]

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[106] RD at 209, 214-15.
[107] RD at 201-203, 207-209; EGS Parties Exc. at 7; RESA Exc. at 18.
[108] RD at 202-203.
[109] RD at 214.
[110] RD at 215.
[111] 66 Pa. C.S. §§ 2802(9)-(10), 2803, 2804(9), 2807(d), 2809(e).

E. CAUSE-PA Reply Exception 5: The supplier parties' speculative claims of market destruction are unsupported by record evidence and should be rejected.

Reply to:

- RESA Exception 2
- TSE/WGL Exception 3
- EGS Parties Exception 3

Throughout their Exceptions, the supplier parties ask the Commission to disregard the extensive record evidence in this case and instead credit speculative warnings that FE PA's targeted consumer-protection reforms will destroy the residential retail market.[112] Notably, no supplier witness quantified these claims.[113] As support, the supplier parties instead rest largely on a recent legislative change in Maryland "that removed POR from the residential market, eliminated automatic contract renewals, and placed price restrictions on product offerings."[114]

The RD properly considered the actual record before it—not conjecture about what suppliers might do in response to reasonable reforms designed to prevent documented customer harm.[115] The Settlement preserves direct access to the competitive market, preserves the POR program, preserves the ability of suppliers to offer products at any price, and preserves the ability of customers to affirmatively choose those products.

As CAUSE-PA explained through briefing, "strengthening consent requirements and POR rules will strengthen the competitive market, not weaken it – restoring trust and accountability in the marketplace and eliminating supplier subsidies paid for by residential ratepayers in the form of higher uncollectible expenses."[116] The supplier parties' reliance on Maryland is inapposite. CAUSE-PA's Reply Brief correctly observed that "Pennsylvania is not Maryland."[117] RESA and

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112 See RESA Exc. at 3, 19-20; TSE/WGL Exc. at 25-26.
113 CAUSE-PA RB at 30-33; RD at 203-205, 228-229.
114 TSE/WGL Exc. at 25.
115 RD at 196, 200-201, 214-215, 229.
116 CAUSE-PA RB at 18.
117 CAUSE-PA RB at 31.

TSE/WGL did not provide any meaningful analysis comparing Maryland's competitive market – either before or after the recent legislation was implemented – to Pennsylvania's competitive market or the targeted reforms proposed in this case.[118] The RD's task was to decide this Pennsylvania proceeding on this Pennsylvania record. It was not required to elevate unsupported claims about a different state's policy choices over the substantial evidence developed in this case.

The supplier parties also failed to show that they cannot operate under the Settlement's framework. They did not provide credible evidence that suppliers will be unable to offer residential products if customers must affirmatively consent to renewal terms or affirm their desire to remain on a variable rate contract, or if suppliers charging above the PTC must bear the associated collection risk rather than shifting that risk to FE PA and its customers through POR. To the contrary, TSE's own witness admitted through discovery that it operates in Maine, where there is no POR program, but provided no evidence that its products or operations there are materially different from those in Pennsylvania.[119]

The RD properly grounded its conclusions in the record evidence of harm and in the narrow scope of the Settlement reforms.[120] Those findings squarely rebut the supplier parties' speculative market-destruction narrative. The Commission should therefore reject the supplier parties' Exceptions and affirm the RD's conclusion that the Settlement's retail-market reforms are reasonable, lawful, and necessary to protect customers from ongoing harm.

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[118] CAUSE-PA RB at 31-32.
[119] CAUSE-PA RB at 39; CAUSE-PA St. 1-R at 22 & App. A-R.
[120] RD at 196-200, 214-215, 229.

III. CONCLUSION

The Exceptions filed by RESA, Constellation, TSE/WGL, and the EGS Parties repurpose arguments already presented through testimony and briefing and fully addressed in the RD. The supplier parties ask the Commission to disregard extensive evidence of customer harm, elevate passive customer inaction over affirmative customer consent, ignore documented affordability concerns, and preserve the status quo despite years of demonstrated adverse outcomes. The RD properly rejected those arguments and should be adopted without modification.[121]

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[121] RD at 195-205, 227-229; CAUSE-PA MB at 7-12, 20-29; CAUSE-PA RB at 17-43.