Morgan Lewis

Kenneth M. Kulak
Partner
+1.215.963.5384
ken.kulak@morganlewis.com

September 8, 2026

VIA eFILING

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

Dear Secretary Homsher:

Enclosed for filing in the above-captioned proceeding is the **Reply of FirstEnergy Pennsylvania Electric Company to the Exceptions to the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon** dated August 21, 2026 (the "Reply Exceptions").

The public version of the Reply Exceptions will be served on the presiding Administrative Law Judges ("ALJs") and all parties of record, as evidenced by the enclosed Certificate of Service, along with the Commission's Office of Special Assistants ("OSA"). The HIGHLY CONFIDENTIAL version of the Reply Exceptions will be served only on the ALJs, OSA and counsel for parties that have executed a Non-Disclosure Certificate in accordance with Paragraph 5 of the Protective Order entered in this proceeding

If you have any questions, please do not hesitate to contact me. Thank you.

Very truly yours,

Kenneth M. Kulak

c: Per Certificate of Service (w/encls.)
Office of Special Assistants (ra_osa@pa.gov)

DB1/ 173931385.1

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 TO MAY 31, 2031	:	**DOCKET NO. P-2026-3060298**

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have on this day served copies of the **Reply of FirstEnergy Pennsylvania Electric Company to the Exceptions to the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon** on the persons listed below, in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL

The Honorable Mark A. Hoyer
Deputy Chief Administrative Law Judge
Pennsylvania Public Utility Commission
Piatt Place
301 Fifth Avenue, Suite 220
Pittsburgh, PA 15222
mhoyer@pa.gov

The Honorable Erin L. Gannon
Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
egannon@pa.gov

Harrison W. Breitman*
Katherine "Katie" Kennedy*
Olivia M. Spergel*
Office of Consumer Advocate
Forum Place - 5th Floor
555 Walnut Street
Harrisburg PA 17101-1923
OCAFEPADSP26@paoca.org
Counsel for the Office of Consumer Advocate

Rebecca Lyttle*
Office of Small Business Advocate
Forum Place – 1st Floor
555 Walnut Street
Harrisburg, PA 17101
relyttle@pa.gov
Counsel for the Office of Small Business Advocate

Todd S. Stewart*
HMS Legal LLP
501 Corporate Circle, Suite 302
Harrisburg, PA 17110
tsstewart@hmslegal.com
Counsel for Shipley Choice , LLC d/b/a Shipley Energy and Interstate Gas Supply LLC d/b/a IGS Energy EGS Parties

Elizabeth R. Marx*
Lauren N. Berman*
Ria M. Pereira*
John W. Sweet*
Levi A. Phillips*
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@pautilitylawproject.org
Counsel for the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania

Melissa A. Chapaska*
HMS Legal LLP
501 Corporate Circle, Suite 302
Harrisburg, PA 17110
machapaska@hmslegal.com
Counsel for Penn Renewables LLC

Whitney E. Snyder
Erich W. Struble
HMS Legal LLP
501 Corporate Circle, Suite 302
Harrisburg, PA 17110
wesnyder@hmslegal.com
ewstruble@hmslegal.com
Counsel for The Pennsylvania State University

Susan E. Bruce*
Charis Mincavage*
Matthew Garbe*r
Rebecca Kimmel*
McNees, Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
sbruce@mcneeslaw.com
cmincavage@mcneeslaw.com
mgarber@mcneeslaw.com
rkimmel@mcneeslaw.com
Counsel for Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, and West Penn Power Industrial Intervenors

Mitchell H. Kizner*
Flaster Greenberg, PC
Commerce Center
1810 Chapel Avenue West
Cherry Hill, NJ 08002
mitchell.kizner@flastergreenberg.com
Counsel for Dimension PA 1 LLC

Daniel B. Markind
Flaster Greenberg, PC
1717 Arch Street
Suite 3300
Philadelphia, PA 19103
Daniel.markind@flastergreenberg.com
Counsel for Dimension PA 1 LLC

Aron J. Beatty*
Duquesne Light Company
800 North Third Street
Harrisburg, PA 17402
abeatty@duqlight.com
Counsel for Duquesne Light Company

Nicholas A. Stobbe*
Stevens & Lee, P.C.
17 North 2nd Street, 16th Floor
Harrisburg, PA 17101
nicholas.stobbe@stevenslee.com
Counsel for the Customer-Generator Coalition

Michael A. Gruin*
Stevens & Lee, P.C.
17 North Second Street, 16th Floor
Harrisburg, PA 17101
michael.gruin@stevenslee.com
Counsel for WGL Energy Services Inc. and Town Square Energy East, LLC

Donald R. Wagner
Stevens & Lee, P.C.
111 North Sixth Street
Reading, PA 19603
donald.wagner@stevenslee.com
Counsel for WGL Energy Services Inc. and Town Square Energy East, LLC

Colleen Kartychak
Constellation Energy Generation, LLC
1310 Point Street
Baltimore, MD 21231
colleen.kartychak@constellation.com
Counsel for Constellation Energy Generation, LLC and Constellation NewEnergy, Inc.

Linda S. Kizuka*
Constellation
250 Massachusetts Avenue, NW
Suite 760
Washington, DC 20001
linda.kizuka@constellation.com
Counsel for Constellation Energy Generation, LLC and Constellation NewEnergy, Inc.

Marsha D. Makel*
Constellation
1310 Point Street Legal – 8th Floor
Baltimore, MD 21231
Marsha.Makel@constellation.com
Counsel for Constellation Energy Generation, LLC and Constellation NewEnergy, Inc

Samuel W. Cortes
Ashley L. Beach
Fox Rothschild LLP
747 Constitution Drive, Suite 100
Exton, PA 19341
scortes@foxrothschild.com
abeach@foxrothschild.com
Counsel for Solar Energy Industries Association and the Coalition for Community Solar Access

R. Taylor Speer*
Fox Rothschild LLP
2 West Washington Street, Suite 1100
Greenville, SC 29601
tspeer@foxrothschild.com
Counsel for Solar Energy Industries Association and the Coalition for Community Solar Access

Karen M. Kemerait*
Fox Rothschild LLP
301 Hillsborough Street, Suite 1120
Raleigh, NC 27603
kkemerait@foxrothschild.com
Counsel for Solar Energy Industries Association and the Coalition for Community Solar Access

Jamie L. Martines*
Spilman Thomas & Battle, PLLC
301 Grant Street, Suite 3440
Pittsburgh, PA 15219
jmartines@spilmanlaw.com
Counsel for Walmart, Inc.

Barry A. Naum*
Steven W. Lee
Spilman Thomas & Battle, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
bnaum@spilmanlaw.com
slee@spilmanlaw.com
Counsel for Walmart, Inc.

Deanne M. O'Dell*
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dodell@eckertseamans.com
Counsel for the Retail Energy Supply Association

Lauren M. Burge*
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
dodell@eckertseamans.com
Counsel for the Retail Energy Supply Association

Cleon Swartzentruber
Infinity Capital, LLC
121 Redners Way
Leesprot, PA 19533
cleon@infinicap.com

Kenneth M. Kulak (Pa. No. 75509)
Brooke E. McGlinn (Pa. No. 204918)
Maggie E. Curran (Pa. No. 330545)
Morgan, Lewis & Bockius LLP
2222 Market Street
Philadelphia, PA 19103
Telephone No.: 215.963.5384
ken.kulak@morganlewis.com
brooke.mcglinn@morganlewis.com
maggie.curran@morganlewis.com

Counsel for FirstEnergy Pennsylvania Electric Company

Dated: September 8, 2026

***=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**

REPLY OF
FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY
TO EXCEPTIONS

To the Recommended Decision of
Deputy Chief Administrative Law Judge Mark A. Hoyer and
Administrative Law Judge Erin L. Gannon

PUBLIC VERSION

Kenneth M. Kulak (Pa. No. 75509)
Brooke E. McGlinn (Pa. No. 204918)
Maggie E. Curran (Pa. No. 330545)
Morgan, Lewis & Bockius LLP
2222 Market Street
Philadelphia, PA 19103-3007

Tori L. Giesler (Pa. No. 207742)
Angelina Umstead (Pa. No. 309615)
FirstEnergy Service Company
341 White Pond Drive
Akron, OH 44320

Counsel for FirstEnergy Pennsylvania Electric Company

September 8, 2026

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

COURT CASES

COMMISSION DECISIONS

STATUTES

REGULATIONS

I. INTRODUCTION

FirstEnergy Pennsylvania Electric Company ("FE PA" or the "Company"),[1] pursuant to 52 Pa. Code § 5.535, hereby respectfully submits these Replies to the Exceptions filed by Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. ("Constellation"), the Customer-Generator Coalition ("CGC"),[2] Dimension PA 1, LLC ("Dimension"), Infinity Capital, LLC ("Infinity"), the Joint Solar Advocates,[3] the Retail Energy Supply Association ("RESA"), Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy (collectively, the "EGS Parties"), and Town Square Energy East, LLC ("TSE") and WGL Energy Services, Inc. ("WGL") (jointly) in the above-captioned proceeding concerning FE PA's default service program for the period from June 1, 2027 to May 31, 2031 ("DSP VII").

On August 21, 2026, Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon (the "ALJs") issued their Recommended Decision ("R.D.") in this proceeding in which they recommend that the Commission approve the Joint Petition for Non-Unanimous Settlement (the "Settlement") filed on July 2, 2026. In their well-reasoned R.D. (pp. 10-247), the ALJs found and determined that FE PA's DSP VII, as modified by the Settlement, satisfies all the requirements of a default service program imposed by the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-15 ("Choice

---

1 FE PA was formed through the combination of several predecessor Pennsylvania electric utilities approved by the Pennsylvania Public Utility Commission (the "Commission" or "PUC"). On January 1, 2024, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn") (collectively, the "Predecessor Companies"), which were all affiliates and subsidiaries of FirstEnergy Corp., merged into FE PA. FE PA was certificated as a public utility and authorized to provide public utility service in the territories of the Predecessor Companies (now, "Rate Districts").

2 CGC consists of Sunrise Airport Road LLC, Sunrise Forrester Road LLC, Sunrise Franklin Road LLC, Sunrise Harlansburg Road LLC, Sunrise Hendersonville Road LLC, Sunrise McCurdy Road LLC, Sunrise Perry Highway LLC, Sunrise Sandy Lake Greenville Road LLC, Sunrise Sandy Lake Polk Road LLC, and Sunrise Springfield Church Road LLC.

3 JSA consists of the Coalition for Community Solar Access and the Solar Energy Industries Association.

Act") and the PUC's default service regulations. The ALJs also concluded that the Settlement, including the compromises on procurement and implementation plans, reconciliation of default service rates, and classification of non-residential default service customers, is supported by record evidence in this case and in the public interest.[4]

Eight parties either joined or do not oppose the Settlement that adopts DSP VII as proposed by FE PA, with certain modifications to the residential and commercial procurement plans, reconciliation of residential default service rates, and calculation of compensation for excess generation under FE PA's Hourly Pricing Default Service ("HP") Rider, along with commitments related to FE PA's time-of-use rates, maximum bill credits under its Customer Assistance Program, and changes to the Company's website.[5] The parties opposing the Settlement (the "Non-Settling Parties") fall into two groups. First, RESA, Constellation, the EGS Parties and TSE/WGL objected to the Settlement's provisions addressing the expiration of FE PA residential customer contracts with electric generation suppliers ("EGSs") and continuing EGS variable-rate contracts, as well as a limitation on EGS participation in FE PA's purchase of receivables ("POR") program. In addition, RESA recommended a successor Customer Referral Program ("CRP") to FE PA's CRP (scheduled to end on May 31, 2027) and collaboratives to discuss how to improve the program. RESA further opposed the Settlement's provisions relating to responsibility for Network Integration Transmission Service ("NITS") costs under FE PA's Supplier Master Agreement ("SMA") and use of a capacity proxy price ("CPP") in certain circumstances during DSP VII.

---

4 *See* R.D., pp. 55-247.

5 FE PA, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Walmart Inc. ("Walmart"), and Duquesne Light Company ("Duquesne") all signed the Settlement (the "Settling Parties"). Pennsylvania State University ("PSU") and several groups of industrial customers (the "Industrial Customers") did not oppose the Settlement. R.D., p. 5.

Second, several parties with interests in net-metered solar energy systems and/or operating or developing such facilities in FE PA's service territory – CGC, Dimension, and JSA – addressed the Maximum Registered Peak Load ("MRPL") provisions of the Settlement. CGC opposed the Settlement's classification of non-residential default service customers based on MRPL and net power flow. JSA and Dimension did not oppose the Settlement's MRPL classification but requested extended grandfathering for operational and transitional projects and asserted that the Settlement's revisions to FE PA's HP Rider were flawed. Infinity did not intervene in this proceeding but only filed a letter and comments with the PUC opposing FE PA's MRPL proposal. The Commission's regulations (52 Pa. Code § 5.553(a)) only permit parties to seek review of a recommended decision and the PUC should disregard Infinity's Exceptions.

For the most part, the Non-Settling Parties' Exceptions revisit arguments that the ALJs considered. These arguments were also addressed in FE PA's briefs, which the Commission is urged to review. Accordingly, the Exceptions to the ALJs' approval of the Settlement should be rejected for the reasons set forth below, and the R.D. should be approved without modification.[6]

II. REPLY TO EXCEPTIONS

A. The ALJs Correctly Concluded That Classification of Non-Residential Default Service Customers Based on MRPL Under the Settlement Complies with Applicable Laws and Regulations, Is in the Public Interest, and Is Supported By Substantial Evidence (CGC Excs. 1-6; JSA Exc. 4)

In its Exceptions (pp. 7-13), CGC contends that the R.D. is unsupported by substantial evidence because the ALJs rely on FE PA's projections of customer-generator growth and

[6] CGC and the EGS Parties argue that the Settlement was only advanced by a "minority" of parties, and this is "indicative" of the Settlement's purported "public interest failures." CGC Exc., pp. 6, 14; EGS Parties Exc., p. 1. The Settlement was actually signed by six parties (with PSU and the Industrial Customers not opposing the Settlement), while nine parties filed objections. R.D., p. 38. The Commission has consistently viewed non-unanimous settlements as beneficial, with the support of a settlement by the statutory parties charged with protecting the interests of residential customers and small businesses, as here, "a good indicator that the terms and conditions of the settlement are just and reasonable." FE PA Reply Br., pp. 2-4, n.2 (citing cases).

testimony of both FE PA and OCA witnesses regarding increases in default service costs associated with customer-generators. CGC also argues that the R.D. ignores alleged benefits of customer-generation (as does JSA) and "leans heavily" on the PUC's decisions in the recent base rate case proceeding of PPL Electric Utilities Corp. ("PPL")[7] and UGI Utilities Inc. – Electric Division's ("UGI's") last default service proceeding[8] instead of the evidence in this case. In addition, CGC contends that the R.D.'s recommended approval of FE PA's classification of customer-generators based on MRPL and net power flow is inconsistent with Commission regulations, the Alternative Energy Portfolio Standards ("AEPS") Act, and Act 129 of 2008 ("Act 129"). For the reasons set forth below, the PUC should deny each of these Exceptions.

The R.D. is based on substantial evidence. The Commission's regulations define MRPL as "[t]he highest level of demand for a particular customer, based on the PJM Interconnection, LLC [("PJM")], 'Peak Load Contribution Standard,' or its equivalent, and as may be further defined by the [electric distribution company ("EDC")] tariff in a particular service territory."[9] In its initial DSP VII filing, FE PA proposed a further definition of MRPL to reflect net power flow from or into the Company's distribution or transmission system and to serve customers with MRPL of 100 kW or above under FE PA's commercial HP Rider instead of its Price-to-Compare ("PTC") Default Service Rate Rider ("PTC Rider"). The ALJs found that this further definition and classification agreed to by the Settling Parties will properly classify net metering customer-

---

[7] *Pa. P.U.C. v. PPL Elec. Utils. Corp.*, Docket R-2025-3057164 (Opinion and Order entered June 11, 2026) ("*PPL Electric*"); *Pa. P.U.C. v. PPL Elec. Utils. Corp.*, Docket R-2025-3057164 (Opinion and Order entered Aug. 27, 2026) ("*PPL Electric Reconsideration Order*").

[8] *Petition of UGI Utils., Inc. – Elec. Div. for Approval of a Default Serv. Plan for the Period of June 1, 2025 through May 31, 2029*, Docket Nos. P-2024-3049343 et al. (Opinion and Order entered Feb. 20, 2025) ("*UGI Electric*"), *aff'd sub nom.*, *Penn Renewables, LLC v. Pa. P.U.C.*, __ A.3d __, 2026 WL 1466224 (Pa. Commw. Ct. Mar. 13, 2026) ("*Penn Renewables*").

[9] 52 Pa. Code § 54.182.

generators with larger, more sophisticated customers under FE PA's HP Rider and mitigate the "true-up" expense generated by large customer-generators that FE PA projected to be between $60 million to $544 million by 2029 and that commercial PTC Rider customers would pay without the Settlement.[10] The change in FE PA's default service classification would be effective June 1, 2027 for new net metering projects, with existing net metering installations online as of May 31, 2027 exempt from reclassification until June 1, 2029.[11] The Settling Parties also agreed to a revision to FE PA's HP Rider to include capacity and line loss portions of the rider (absent a material change in PJM capacity markets) until May 31, 2041, to encourage development of solar generation.[12]

While CGC acknowledges FE PA's net metering queue contains approximately 1,555 net metering applications, CGC argues that this was a "misleading benchmark" to project energization of customer-generation projects.[13] But as the ALJs recognized in the R.D. (p. 20), FE PA prepared a sensitivity analysis that provided a range of potential customer-generation energizations from just 1% to 50% and demonstrated that just 10% of customer-generator projects coming online by 2029 would lead to a net metering expense for default service small business customers of over $59 million.[14] Moreover, the ALJs found – and CGC does not contest – that FE PA quantified the increase in the Penn Power PTC under the 25-year grandfathering period proposed by JSA without any new customer-generators coming on-line, showing an increase in the Penn Power PTC for commercial default service customers of an astronomical 23,600%, to $32.62 per kilowatt-hour ("kWh") in the 25th year compared to the current $0.1373 per kWh. And although CGC argues

---

10 *See* R.D., pp. 18-20 (Findings of Fact Nos. 37-40, 44).

11 *Id.*, p. 19 (Findings of Fact No. 42).

12 *Id.* (Findings of Fact No. 43).

13 CGC Exc., pp. 10-11.

14 FE PA Initial Br., p. 23.

that even a 10% energization rate is "unlikely" and would "buck historical trends," CGC acknowledges that 18% of the approximately 1,555 projects in FE PA's interconnection queue have agreed to pay for a study agreement that funds a feasibility study, more than 10% of the 2025 applications have paid for an interconnection study, and (as the ALJs found) only about 5% of the 2025 projects have been canceled.[15] These statistics underscore that the 10% energization calculation and the associated increases in the PTC to compensate customer-generators provides more than sufficient justification for the MRPL Settlement provisions.

CGC's arguments about lack of evidence for increased wholesale default service risk premiums are similarly inadequate. While OCA witness Serhan Ogur did not quantify risk premiums associated with customer-generators, he provided several reasons why those premiums exist and why suppliers necessarily must take those premiums into account in their bids to provide default service, including how fluctuating net-metered customer generation can give rise to uncertain capacity costs to serve default service load.[16] The ALJs did not simply rely on PUC's decision in *UGI Electric*, as CGC asserts.[17] And as noted in FE PA's Reply Brief (pp, 20-21), to the extent that that CGC argues that competitive suppliers have no incentive to enroll a customer-generator as a customer (or customer-generators have no incentive to contract with EGSs), that argument only underscores the lack of actual benefits that a customer-generator delivers to the entity paying for the customer-generator's excess generation.

The R.D. properly did not credit unquantified benefits of customer-generators. As the ALJs found, FE PA does not use excess energy from net-metered customers as supply to serve

---

15 *See* R.D., p. 20 (Findings of Fact Nos. 45-47); CGC Exc., p. 11.

16 *See* R.D., pp. 101-02; FE PA Initial Br., pp. 26-27.

17 *See* R.D., p. 21 (Findings of Fact No. 50), 101-102, 114.

default service load.[18] Nevertheless, CGC argues that the R.D. "ignores the undisputed benefits under FirstEnergy's net-metering scheme," and JSA also emphasizes that the R.D. "failed to consider the resource adequacy benefits of customer-generators."[19] But in its Exceptions, as in the proceedings before the ALJs, CGC is entirely unable to quantify the purported benefits customer-generators will deliver, nor explain why small commercial customers should be responsible for paying for benefits (to the extent they exist) that accrue to other customers and people in Pennsylvania.[20] Similarly, while both CGC and JSA assert that the R.D. did not properly consider how net-metered generation can assist with resource adequacy, FE PA witness Gregory F. Hussing made clear that customer-generators are not a dispatchable PJM capacity resource and thus do not directly reduce PJM's forward capacity requirements.[21]

While FE PA witness David M. Young conceded the tautology that there would be more electricity if customer generation is built up and less electricity if there is less customer-generation, he did not concede that default service customers (or any other customers) would be actually receiving any quantified benefits from that customer-generation. The ALJs properly found that such benefits were unquantified and did not include those alleged benefits in determining the costs of customer-generators being paid by other default service customers, including small businesses that do not own generation facilities.[22]

The R.D. correctly reviewed the Settlement and other Commission decisions. CGC also excepts to the R.D. on the ground that the ALJs applied the wrong standard in approving the non-

---

18 R.D., p. 19 (Findings of Fact No. 41); *see also* FE PA St. 6-R, pp. 3-4.

19 CGC Exc., p. 14; JSA Exc., pp. 13-14.

20 CGC Exc., pp. 13-19; FE Initial Br., pp. 30-31; FE Reply Br., pp. 22-24.

21 FE PA St. 6-R, p. 7; *see also* R.D., p. 22 (Findings of Fact No. 53) (finding capacity benefits uncertain).

22 R.D., p. 22 (Findings of Fact No. 56), 132.

unanimous Settlement, improperly relying on the Commission's decisions in *PPL Electric* and *UGI Electric* in approving the Settlement while also making many of the same arguments that the Commission considered in those proceedings, namely, that the PUC's MRPL definition does not permit consideration of customer-generation as "demand" (particularly in a single DSP proceeding), that the MRPL proposal violates the net metering provisions of the AEPS Act, and also violates Act 129's rate design requirements.[23] As with its other Exceptions, CGC is wrong. The ALJs specifically set forth the correct standard for reviewing non-unanimous settlements and the ALJs did not simply cite to earlier decisions, but concluded as a matter of law that the Settlement was consistent with those decisions after analyzing the Settlement's provisions, making numerous detailed findings of fact regarding cost projections and grandfathering based on record evidence, and carefully reviewing the arguments of the parties over 37 pages.[24] The Commission should therefore deny each of CGC's Exceptions.[25]

B. The ALJs Properly Determined That the Settlement's MRPL Two-Year Grandfathering Period With Revisions to FE PA's HP Rider Is Appropriate (JSA Excs. 1, and 2; Dimension Excs. 1-3)

JSA and Dimension do not challenge the Settlement's MRPL classification, but object to the Settlement's two-year "grandfathering" period for existing customer-generators as well as the Settlement's revisions to FE PA's HP Rider. Each party argues that the two-year period is insufficient and not in the public interest in light of upfront capital investments made by customer-

---

[23] CGC Exc., pp. 21-28.

[24] R.D., pp. 6-9 (discussing standard of review), 18-23 (setting forth MRPL-related Findings of Fact), 96-133 (summarizing and analyzing arguments). For example, in analyzing CGC's arguments, the R.D. specifically considered FE PA's rate classifications but also noted that *Penn Renewables* had created clear judicial precedent that "utilizing peak load constructs to reclassify customers is legal, may occur in an individual EDC's proceeding, and does not violate retail net-metering protections." R.D., pp. 112-13.

[25] Subsequent to the R.D., the Commission again considered many of CGC's arguments in reconsidering its decision in *PPL Electric* and again rejected CGC's arguments pertaining to the definition of MRPL and default service customer classification. *See PPL Electric Reconsideration Order*, pp. 25-32.

generators who relied upon FE PA's existing tariff not changing, and is also inconsistent with the ten-year grandfathering period recently approved by the Commission in *PPL Electric*.[26] Each party also argues against the Settlement's revisions to FE PA's HP Rider.[27] These Exceptions are all without merit and should be denied.

The Commonwealth Court and the Commission have made clear that Pennsylvania law does not preclude FE PA's proposed MRPL classification, and the ALJs concluded as a matter of law that customer-generators are not entitled to the PTC Rider.[28] The ALJs considered the extensive arguments of JSA and Dimension but determined that the 25-year period for operating projects proposed by JSA would result in substantial and unreasonable increases in commercial default service rates throughout FE PA's territory, even without any new customer-generators and with compensation at 90% of the commercial PTC as JSA proposed.[29] While the PUC did approve a 10-year grandfathering period incorporated in the settlement in *PPL Electric,* the settlement in that case incorporated a capacity cap of 140 MW with an associated potential PTC increase of about $0.02/kWh. Contrary to the claims of JSA, there is no "apples-to-oranges" comparison; the cap functions as an actual limitation based on projects expected to be placed in service by September 30, 2026, which JSA did not propose in this proceeding until its Main Brief.[30]

---

26 Dimension Exc., pp. 2-3, 4; JSA Exc., pp. 4-9, 11-12.

27 Dimension Exc., pp. 3-4; JSA Exc., pp. 10-11.

28 *Penn Renewables*, pp. 12, 14, 17; *PPL Electric*, pp. 171, 202; R.D., p. 242 (Conclusion of Law No. 22).

29 R.D., p. 23 (Findings of Fact Nos. 60-61). Testimony of FE PA witness Young further established that if JSA's transitional projects were also included, the commercial PTC Rider would increase across all FE PA rate districts, including a 132,980% increase in the Penn Power Rate District alone. FE PA St. 1-R, p. 24. Like CGC, JSA argues that FE PA's sensitivity analysis may be "dubious" (JSA Exc., p. 11) but JSA does not provide any alternative energization projections.

30 *See* R.D., pp. 118-119; JSA Exc., pp. 10-11; *PPL Electric*, p. 195. Contrary to JSA's Exceptions (p. 11), the R.D. did consider its shorter grandfathering period for Penn Power (even though JSA introduced it for the first time in its Main Brief) but did not approve it. *See* R.D., pp. 97-98, 132. The Company also addressed JSA's criticisms of the assumptions used in its calculations of PTC Rider rates. *See* R.D., p. 117 n. 463.

Furthermore, the ALJs correctly concluded that the Settlement's revised HP Rider was a "reasonable compromise" and recommended approval of FE PA's commitment to maintain the HP Rider capacity and line loss provisions until May 31, 2041 absent a material change in PJM's capacity markets.[31] Walmart – which intends to develop solar generation in FE PA's service territory – had presented testimony regarding a similar provision in the *PPL Electric* settlement and concluded the revised HP Rider "provides some stability for prospective customer-generators like Walmart to move forward with solar projects."[32] While JSA and Dimension argue that the provision leaves FE PA too much flexibility,[33] the Settlement requires FE PA to meet with the Settling Parties to discuss any proposed changes and any proposed change to the HP Rider would remain subject to the Commission's review.

C. The ALJs Properly Rejected JSA's Proposal That FE PA Include Negative Peak Load Contributions (JSA Exc. 3)

JSA also proposed that the Commission require FE PA to assign an individual negative "peak load contribution" ("PLC") to customer-generators for allocating capacity costs, as well as a negative network service peak load ("NSPL") in allocating transmission costs.[34] FE PA witness Hussing explained that PLCs are accounting constructs (which JSA acknowledged) and assigning a negative PLC to a customer-generator will result in a higher allocation of costs to other customers (including customers in different default service classes).[35] Mr. Hussing also explained that

---

31 R.D., p. 133,

32 *See* R.D., pp. 119-120, 125; Walmart Statement in Support, p. 3. Although Infinity's Exceptions should not be considered by the Commission, Infinity's request for "data inputs used to determine the capacity portion credited to customer-generator exports" in the HP Rider and that FE PA "apply that methodology consistently and on a non-discriminatory basis" is inapposite; the HP Rider includes the costs for capacity (as well as AEPS and other costs) established through FE PA's competitive procurement for default service supply for industrial customers. *See* FE PA St. 2, pp. 15-16; FE PA Exhibit CDL-2.

33 Dimension Exc., pp. 3-4; JSA Exc., pp. 10-11.

34 R.D., pp. 125-26.

35 FE PA St. 6-R, pp. 5, 8.

asserted forward capacity and transmission benefits that JSA relied upon to justify the use of negative PLCs were uncertain, as those benefits relied upon assumed future solar-generation by a customer-generator at periods of PJM coincident peak load.[36] OCA witness Ogur agreed with Mr. Hussing,[37] and the ALJs subsequently made factual findings consistent with Mr. Hussing's testimony regarding the effects of negative PLCs on cost allocation and the associated uncertainty of actual benefits.[38] The ALJs did not modify the Settlement to incorporate JSA's request, nor did the ALJs adopt JSA's proposal for a statewide proceeding to address PLCs which JSA first proposed in its Initial Brief.

In its Exceptions (pp. 12-12), JSA argues that the R.D. is flawed as a matter of law because the ALJs "failed to adjudicate" the PLC issue. But under well-established precedent, the decisions of the Commission – and recommended decisions of administrative law judges – are sufficient if the order "refers to facts in the record supporting the conclusion, and it is not necessary that each and every issue raised by the parties be discussed."[39] Here, the ALJs reviewed the testimony of each party, explicitly considered JSA's arguments, and made specific factual findings establishing that negative PLCs were based upon uncertain benefits and should not be adopted. Furthermore, JSA's late request for a statewide proceeding to address PLCs is unjustified and inappropriate where other parties with interests relating to capacity and transmission costs have not had any opportunity to intervene or address its proposal; should JSA believe such a proceeding is appropriate, it can file a separate petition to which all interested stakeholders can respond. The Commission should deny JSA's Exception No. 3.

---

36 FE PA St. 6-R, p. 5; FE PA St. 6-RJ, pp. 2-3.

37 OCA Initial Br., pp. 21-23; FE PA Initial Br., pp. 28-30; FE PA Reply Br., pp. 21-22.

38 R.D., p. 21 (Findings of Fact Nos. 51-52).

39 *See*, *e.g.*, Consol. *Rail Corp. v. Pa. P.U.C.*, 625 A.2d 741, 744 (Pa. Commw. Ct. 1993).

D. The ALJs Properly Rejected Non-Settling Party Objections to the Settlement's Supplier Coordination Tariff Changes Related to EGS Arrangements with Residential Customers and FE PA's POR Program (Constellation Excs. 1-4; EGS Parties Excs. 1-3; RESA Excs. 1-4; TSE/WGL Excs. 1-4)

As described in the R.D. (pp. 163-64), the Settlement adopts FE PA's originally proposed modifications to FE PA's Electric Generation Supplier Coordination Tariff ("Supplier Tariff") for new EGS contracts entered into after June 1, 2027 to encourage customers to make intentional choices about the cost of their generation supply and to incentivize EGSs to consider the impact of their pricing on customer affordability. First, FE PA residential customers must affirm their choice to remain with their EGS at the end of a fixed-duration contract or quarterly during a month-to-month variable rate contract. Second, EGSs on utility consolidated billing ("UCB") must use "rate-ready" billing and charge a rate that is at or below the PTC at the time of the customer's enrollment or rate change transaction to be eligible for POR for that customer account.

In this case, RESA, Constellation, the EGS Parties, TSE and WGL (collectively, the "Supplier Intervenors") uniformly opposed changing the rules for EGS contracts with residential customers and imposing collection risk on EGSs that charge rates above the PTC. They alleged that the Supplier Tariff changes adopted in the Settlement would constrain the competitive market and are not necessary to address concerns raised by FE PA, CAUSE-PA, and the OCA about the adverse impact of above-PTC supplier pricing on customer bills and affordability.[40]

In the R.D. (pp. 164-229), the ALJs analyzed and rejected each of the Supplier Intervenors' objections to the Supplier Tariff changes and associated waiver of the autorenewal provisions of the PUC's regulations at 52 Pa. Code § 54.10, finding that the Settlement's provisions preserve retail choice while addressing the harms arising from customers consistently paying more for

---

[40] *See* RESA St. 1, pp. 8-47, 50-56; RESA St. 1-R, pp. 18-20; RESA St. 1-SR, pp. 5-21; TSE St. 1, pp. 74. Constellation, the EGS Parties, and WGL did not present any evidence in this case but relied on the testimony of RESA witness Frank Lacey and TSE witness Randal Miller in opposing the Settlement in briefing.

electric generation supply established by the record evidence in this case. The Supplier Intervenors take exception to those findings and rehash the same arguments the ALJs found unconvincing.

1. The Settlement's Supplier Tariff Changes Are Necessary to Mitigate the Harm Arising from the Current Protocols Governing EGS Contracts with FE PA Residential Customers and Unlimited Access to POR.

In their Exceptions, several of the Supplier Intervenors claim that unrefuted evidence of higher termination rates and uncollectible expense among FE PA shopping customers caused by paying hundreds of millions of dollars above the PTC for electric supply since 2017 does not justify the Supplier Tariff revisions.[41] RESA continues to rely on the Commission's *PPL DSP V*[42] and *PECO DSP VI*[43] decisions, which concluded that affirmative consent requirements in the context of customer referral programs were "restrictions" on competition under the Commonwealth Court's guidance on the legal standards for retail market proposals.[44] In those two cases, the evidence showed that shopping customers were paying prices for generation service well above the PTC, but the PUC found that the EDCs did not present sufficient evidence of harm associated with customer referral programs (such as an increase in service terminations or higher uncollectible expense).[45] In contrast, as detailed by the ALJs, the record in this case includes extensive evidence of pervasive harm to FE PA residential shopping customers (and other customers) directly correlated with residential shopping customers overpaying for generation supply, including precise types of harm the Commission found was not established in *PPL DSP V*

---

[41] *See* Constellation Exc., pp. 5-6; EGS Parties Exc., pp. 5, 9; RESA Exc., pp. 12-14, 21-33.

[42] *PPL Elec. Utils. Corp. for Approval of Its Default Serv. Plan for the Period June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019356 (Opinion and Order entered Dec. 17, 2020) ("*PPL DSP V*").

[43] *Petition of PECO Energy Co. for Approval of Its Default Serv. Program for the Period from June 1, 2025 through May 31, 2029*, Docket No. P-2024-3046008 (Opinion and Order entered Nov. 7, 2024) ("*PECO DSP VI*").

[44] *Coalition for Affordable Utility Serv. & Energy Efficiency in Pa. v. Pa. P.U.C.*, 120 A.3d 1087, 1101 (Pa. Commw. Ct. 2015) (*en banc*), *allocatur denied*, 136 A.3d 982 (Pa. 2016) ("*CAUSE-PA*"); *Retail Energy Supply Ass'n v. Pa. P.U.C.*, 185 A.3d 1206, 1228 (Pa. Commw. Ct. 2018) ("*RESA*").

[45] *See PECO DSP VI*, pp. 79-80; *PPL DSP V*, pp. 96-98.

and *PECO DSP VI*.[46] Not only did FE PA's residential shopping customers pay $82 million more than the PTC in 2025, $395 million more than the PTC from 2022 through 2026, and $888 million more than the PTC since 2017,[47] but the evidence in this proceeding demonstrated:

- Service termination rates for FE PA residential shopping customers are up to ten times higher than residential default service customers.[48]
- Involuntary termination rates in 2025 ranged between 14-22% for residential shopping customers compared to just 1-3% for residential default service customers.[49]
- The average per-customer write-off balance for shopping customers ($2,173) was more than double the amount for default service customers ($972), which correlates to a higher risk of involuntary termination.[50]
- The uncollectible expense per FE PA residential shopping customer was $22.83, or almost three times more than the uncollectible expense per residential default service customer ($7.82).[51]
- From 2022 to 2025, on average, 40% of the Company's total residential generation uncollectible expense was attributable to purchased EGS accounts receivable even though only 18% of residential customers were shopping over that same period.[52]
- Complaints involving EGSs in 2025 were 50% higher than in 2024.[53]

---

[46] *See* R.D., pp. 31-34 (Findings of Fact Nos. 90, 94-97), 165-66, 198-99.

[47] FE PA St. 1, p. 22.

[48] *See* FE PA Ex. DMY-10; CAUSE-PA St. 1, pp. 23-25.

[49] CAUSE-PA St. 1, pp. 24-25.

[50] *See* RESA Ex. FL-28.

[51] FE PA St. 1-R, pp. 9-10; FE PA Ex. DMY-12; *see also* CAUSE-PA St. 1-R, pp. 17-18.

[52] FE PA St. 1-R, pp. 9-10; FE PA Ex. DMY-12.

[53] FE PA St. 1 (Corrected), p. 22.

Furthermore, unlike the EDCs in *PPL DSP V* and *PECO DSP VI*, the ALJs found that FE PA had already pursued "less restrictive" alternatives to try to alleviate the documented harms to FE PA customers arising from high EGS prices, including POR clawback charges based on a screening test to recoup a small fraction of the uncollectible amounts from EGSs who fail the screening test.[54] Despite those POR changes, a substantial number of EGSs pay clawback charges because they fail the screening test by charging prices 1.5 times higher than the PTC and generating POR-related write-offs at least 200% above the average for the entire EGS population serving FE PA customers.[55] For all of these reasons, the ALJs correctly concluded that the Settlement's Supplier Tariff modifications are necessary to address the harms documented in this case and there are no other reasonable alternatives supported by substantial evidence.[56]

2. Changing EGS Arrangements with Residential Customers and Limiting Eligibility for POR as Provided in the Settlement Does Not Contravene the Choice Act.

In arguing that the ALJs ignored potential impacts of the Settlement to retail competition, the Supplier Intervenors would have the Commission believe that the Supplier Tariff changes would somehow invalidate customer choice or regulate EGS prices in violation of the Competition Act.[57] That is not the case. Under the Supplier Tariff changes, EGSs can continue to offer any

---

54 R.D., p. 199; *see also* FE PA Reply Br., p. 38.

55 FE PA St. 1 (Corrected), pp. 26-27.

56 *See* R.D., pp. 245-46 (Conclusion of Law Nos. 38-40, 46). Contrary to RESA's contention in its Exceptions (pp. 27-28), RESA did not provide any evidence that the alternatives offered by Mr. Lacey, including supplier consolidated billing, would address the harm established by the record, and in many cases, RESA's proposals have been rejected by the PUC. *See* FE PA Initial Br., pp. 44-45. The ALJs' finding that the "alternatives" to the Supplier Tariff revisions are not supported by substantial evidence does not improperly shift the burden of proof from FE PA to the Non-Settling Parties as RESA claims. *See NRG Energy, Inc. v. Pa. P.U.C.*, 233 A.3d 936, 950 (Pa. Commw. Ct. 2020). Similarly, WGL/TSE's efforts to minimize the documented harm by simply comparing raw data on uncollectible expense and terminations by number of default service customers and shopping customers should be rejected. *See* FE PA Reply Br., pp. 36-37 (explaining WGL/TSE comparisons "miss the point" shown by higher uncollectible expense and write-offs generated by shopping customers).

57 *See* Constellation Exc., pp. 2-4; EGS Parties Exc., pp. 3-5, 7-8; RESA Exc., pp. 3, 5-12; TSE/WGL Exc., pp. 18-27.

pricing, contract duration, and non-price attributes, such as renewable energy or long-term price stability, as they do today.[58] As the ALJs found, the Supplier Intervenors' repeated assertion that FE PA customers are paying higher prices for value-added products was unsupported.[59] **[BEGIN HIGHLY CONFIDENTIAL]**

[**END HIGHLY CONFIDENTIAL**]

The affirmative customer consent requirements adopted by the Settlement would only be included in new EGS contracts executed by shopping customers in FE PA's service territory after June 1, 2027, and do not force residential shopping customers to return to default service as RESA, Constellation, the EGS Parties, and TSE/WGL contend.[61] After considering all of the legal arguments of RESA and the EGSs in detail,[62] the ALJs explained that under the Settlement, "[a]s now, customers would remain free to take action – whether they act to choose the same or different product from the existing EGS, enroll with another EGS, or return to the default service provider."[63] And contrary to the claims of the Non-Settling Parties, the ALJs considered their arguments regarding customer consent to changes in electricity supply based on the Choice Act and Commission regulations and determined that "[r]eturning FirstEnergy residential shopping customers that take no action at the end of the contract term to default service is not 'slamming.'"[64]

---

58 *See* FE PA St. 1-R p. 13.

59 *See* R.D., pp. 37 (Finding of Fact No. 106), 196-99, 208, 229.

60 FE PA St. 1-R, pp. 11-12; FE PA Highly Confidential FE PA Ex. DMY-14.

61 R.D., pp. 32-33 (Finding of Fact No. 92); *see* Constellation Exc., pp. 3-4; EGS Parties Exc., pp. 3-5; TSE/WGL Exc., pp. 18-27.

62 *See* R.D., pp. 181-94.

63 *Id.*, p. 196.

64 *See id.*, pp. 195-96, 245-46 (Conclusion of Law Nos. 41-46); *see also, e.g.*, R.D., pp. 181-86 (summarizing RESA arguments relating to customer choice under the Public Utility Code and PUC regulations), 190-91 (summarizing similar arguments of the EGS parties). With respect to Chapter 57 of the Commission's regulations relied upon by Constellation (Constellation Exc., pp. 3-4), the R.D. explicitly noted OCA's argument that "the anti-slamming

As the ALJs explained, under the Settlement, customers will continue to be informed of the result of inaction in accordance with the terms of the post-June 1, 2027 EGS contracts to which they have agreed and expiration notices.[65]

In short, the evidence demonstrates that the Supplier Tariff changes both address multiple harms from FE PA residential customers unknowingly paying prices in excess of the PTC and enhance customer choice by allowing customers to assess changing EGS contract terms and prices and make an informed decision before reenrolling.[66] As the ALJs concluded, "we find that the Settlement's modification to the consequences when a residential 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 and direct access to retail markets."[67]

3. The Waiver Requested by the Joint Petitioners to Implement the Settlement's Affirmative Consent Requirements Is Appropriate and in the Public Interest.

Concerns about the impact of EGS charges on affordability are particularly important given the auto-renewal with customer opt-out practice authorized in the Commission's regulations at 52 Pa. Code § 54.10(3) ("Section 54.10(3)").[68] Under those regulations, if a customer does not

---

provisions were enacted to prevent unauthorized enrollment with a competitive supplier or unauthorized switching between suppliers." *Id.*, p. 174 (summarizing OCA arguments with reference to Commission 1998 statement that "[t]he purpose of these regulations is to ensure that no consumer has his/her EGS changed without his/her consent").

[65] R.D., p. 196. The Commission's recent decision on borough community aggregation is inapposite. *See Petition of the Boroughs of Camp Hill, Carlisle, Hatboro, Landsdowne, Media, Narberth, State College, and Swarthmore for a Declaratory Order Regarding the Implementation of Community Choice Aggregation*, Docket No. P-2024-304963 (Opinion and Order entered Aug. 14, 2025), p. 67-68 (explaining that the boroughs sought authorization from the Commission "to transfer residents and resident small businesses to [community aggregation supply] without advance consent.").

[66] *See* R.D., p. 35 (Finding of Fact No. 99); FE PA St. 1 (Corrected), pp. 22-24; FE PA St. 1-R, p. 7. The ALJs also expressly considered RESA's arguments that a customer could be returned to default service even when the EGS's renewal price is lower than the PTC (RESA Exc., pp. 22-23), but agreed with FE PA that the Supplier Tariff revisions will help ensure that customers make informed choices about electric generation supply while remaining entirely free to stay with their EGS. R.D., p. 199.

[67] *See* R.D., pp. 199-200, 209.

[68] *See id.*, pp. 34-35 (Finding of Fact No. 98).

respond to the required notices, EGSs currently can increase the customer's price after an introductory "teaser" rate that might be temporarily lower than the PTC or other competitive offers or change a fixed-rate contract to a variable-rate contract.[69] EGS prices under variable rate contracts can change by the hour, day, or month, based on market conditions according to the terms in the supplier's disclosure statement that may not specify the EGS's pricing methodology.[70]

In addition to denying the existing of any harm arising from the current autorenewal protocols for fixed-duration contracts and month-to-month contracts, Constellation, the EGS Parties, and TSE/WGL offer two additional reasons they believe that the ALJs erred in recommending approval of the Joint Petitioners' request for waiver to avoid conflicts between FE PA's Supplier Tariff and existing regulations. Neither of these arguments have merit, and the corresponding Exceptions should be dismissed.

First, Constellation and TSE/WGL contend that the requested waiver would effect a permanent change to the autorenewal provisions of Section 54.10 promulgated in 2014 through a formal rulemaking process.[71] However, any waiver granted in this case under 52 Pa. Code § 5.43 is temporary in nature because it will expire at the end of DSP VII unless again considered and approved by the Commission.[72] Since the 2014 rulemaking, the Commonwealth Court has also made clear that the Choice Act is not intended to facilitate "unbridled competition," and restrictions may be necessary in order to address customer harm.[73] The ALJs concluded correctly

---

[69] FE PA St. 1 (Corrected), pp. 22-23.

[70] *See Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134 (Order entered March 4, 2014), pp. 3-4. The EGS Parties' contention that the R.D. does not identify record evidence regarding the harms from variable-rate contracts (EGS Parties Exc., p. 6) is simply wrong. The ALJs summarized extensive OCA and CAUSE-PA testimony regarding harms associated with such contracts. *See* R.D., pp. 202-04.

[71] *See* Constellation Exc., pp. 4-5; TSE/WGL Exc., pp. 6-12, 17-18.

[72] *See* R.D., pp. 196-97.

[73] *CAUSE-PA*, 120 A.3d at 1101.

that a waiver of Section 54.10's autorenewal requirements during DSP VII for FE PA residential customers is appropriate to address the higher uncollectible expense and termination activity associated with FE PA shopping accounts that has continued under the current two-notice protocol for nearly a decade, even after adoption of FE PA's POR clawback mechanism.[74]

Constellation's and TSE/WGL's claim that it is improper to consider affirmative consent requirements and the associated waiver outside of a statewide proceeding is also wrong. The Commission has employed default service proceedings to address retail market issues, and EGSs themselves have introduced non-procurement issues in those EDC-specific proceedings.[75] Moreover, supplier coordination tariffs are EDC-specific and EGSs operate among various utilities in Pennsylvania and other states with different retail shopping requirements.[76]

4. The POR Program Changes Adopted Under the Settlement Allow EGSs to Preserve the Benefit of Guaranteed Upfront Payments at Face Value While Protecting Customers from Unnecessary and Excessive Costs.

In the R.D. (p. 227), the ALJs properly rejected arguments that data regarding POR-related uncollectible expense does not provide an adequate basis for limiting POR eligibility. The Commission does not have the authority to compel EDCs to purchase EGS receivables and absorb collection risk that ultimately drives up costs recovered from all residential and commercial customers.[77] Given the voluntary nature of POR programs, changing FE PA's current eligibility

---

[74] *See* R.D., p. 198. The ALJs also rejected WGL/TSE's additional argument that the Settlement's quarterly affirmation requirement conflicts with 52 Pa. Code § 54.5, properly concluding that the quarterly affirmation requirement "supplements" but does not conflict with Commission regulations. R.D., p. 208.

[75] *See* R.D., p. 197; FE PA Initial Br., pp. 44-45.

[76] R.D., p. 197; *Cf. PPL Electric Utils. Corp. for Approval of a Default Service Program and Procurement Plan for the Period from June 1, 2025 through May 31, 2029*, Docket No. P-2024-3047290(Opinion and Order entered Nov. 7, 2024) (adopting Recommended Decision to approve settlement petition eliminating standard offer program), pp. 1-2; FE PA Initial Br., p. 53 (noting that Town Square operates in Maine without POR).

[77] *See* 66 Pa.C.S. § 2807(c)(3); *Petition of PPL Elec. Utils. Corp. Requesting Approval of a Voluntary Purchase of Receivables Program and Merchant Function Charge*, Docket No. P-2009-21290502, 2009 WL 4087051 (Pa. P.U.C. Nov. 19, 2009) ("No provision of the Code either expressly or by 'strong and necessary implication' provides the Commission with the authority to require EDCs to purchase accounts receivable from EGSs. On the

parameters does not constitute a restriction on competition. As the Commission has explained, "the participation of the EGS in a POR is voluntary and as such, the EGS has implicitly assented to modifications of the program, assuming such modifications are reviewed and approved by the Commission according to procedural due process."[78] Eliminating POR for customer accounts where EGSs have charged prices higher than the PTC will substantially reduce FE PA customers' exposure to unreasonable EGS-driven uncollectible expenses.[79]

Contentions that the POR revisions are discriminatory and damaging to the competitive market must also be rejected.[80] EGSs that choose not to use rate ready billing or to charge rates higher than the PTC can still use UCB and seek to collect arrearages using the same legal options available to other competitive businesses.[81] The only difference will be is that EGSs will no longer have unrestricted access to guaranteed payments at the expense of FE PA and its customers.[82] Arguments that FE PA should have refined the screening measures used to assess clawback charges instead of changing POR eligibility requirements[83] are also undercut by FE PA's testimony that ending the clawback mechanism will also reduce administrative burden on the Company.[84]

---

contrary, the Code specifically provides that the Commission cannot require EDCs to purchase EGS' accounts receivable.").

78 *See Respond Power, LLC v. Pa. Elec. Co. and West Penn Power Co.*, Docket Nos. C-2016-2576292 et al. (Opinion and Order entered June 13, 2019), *aff'd*, 2017 WL 3116428 (Pa. Commw. Ct. 2017), p. 46.

79 *See* FE PA St. 1, pp. 24-25.

80 *See* EGS Parties Exc., pp. 7-9.

81 *See* FE PA Initial Br., p. 52; R.D., pp. 213, 229.

82 *See* R.D., p. 228 (concluding that "the demonstrated harms to FirstEnergy customers support the Company's proposed changes" to the POR program).

83 See EGS Parties Exc., p. 9.

84 *See* R.D., p. 229; FE PA St. 1-R, p. 13. RESA's additional argument that the POR changes should not be applied uniformly because commercial customers collectively paid less than the PTC should be given no weight (RESA Exc., pp. 25-26). The Commission can approve changes to an EDC's voluntary POR program without a finding of class-specific harm.

E. The ALJs Properly Determined That the Change in Responsibility for NITS Charges and Continuation of a Capacity Proxy Price Mechanism in FE PA's Default Service Solicitations Under the Settlement Is Reasonable and in the Public Interest (RESA Exc. 5, EGS Parties Exc. 4)

Currently, default service suppliers are responsible for PJM charges for NITS and those costs are embedded in their prices for full requirements products, which FE PA recovers as part of the cost component of its PTC and HP Riders.[85] As originally proposed, the SMA agreed to under the Settlement allocates PJM bill line items for NITS to FE PA – instead of the default service supplier – and the Company will recover those costs directly through the NITS components of the PTC and HP Riders.[86] RESA is the only party that opposed changing the Settlement's treatment of PJM charges for NITS under the SMA in testimony and briefing.[87]

In the R.D. (pp. 74-75), the ALJs found that the change in allocation of NITS costs and found that such treatment "prevents customers from paying unnecessary risk premiums associated with embedding volatile and difficult-to-predict transmission costs into [full requirements] products."[88] The ALJs also disagreed with RESA's view that an EDC assuming the risk of acquiring NITS on behalf of default service suppliers but not EGSs will distort competition between wholesale and competitive suppliers.[89] RESA and the EGS Parties Exceptions to the R.D.'s approval of the Settlement's treatment of NITS costs should be rejected for two reasons.

First, contrary to RESA's assertion that the Settlement would unjustifiably transfer wholesale market risk to customers, FE PA responsibility for NITS will benefit customers. As the ALJs explained, the Commission has approved removing NITS costs from other EDCs' SMAs

---

85 *See* FE PA St. 2, pp. 4-5, 11; FE PA St. 4, pp. 5-6.

86 *See* Joint Petition, ¶¶ 28-29, Ex. B; FE PA Ex. RJR-2; FE PA Ex. CDL-2.

87 RESA St. 1, pp. 37-48; RESA St. 1R, pp. 25-31; RESA St. 1SR, pp. 25-26; RESA Initial Br., p. 16.

88 R.D., p. 75; *see also id.*, p. 74.

89 *Id.*, p. 75.

and supplier responsibility to avoid "unnecessary costs while promoting rate stability."[90] In its Exceptions, RESA concedes, as it must, that since NITS costs are unhedgeable and have been volatile, the risk allocation under the Settlement may reduce default service supplier bid prices.[91] The transfer of risk may reduce overall costs to customers by ensuring that they pay actual costs rather than estimated costs inflated by risk premiums associated with uncertain NITS charges.[92]

Second, RESA and the EGS Parties repackage arguments advanced in Mr. Lacey's testimony regarding economic parity between default and competitive supply that the ALJs found unconvincing.[93] According to RESA, default service and EGS prices must reflect the same allocation of wholesale market risk.[94] However, as the ALJs found, that argument erroneously assumes that both types of suppliers face the same risks in managing their wholesale cost obligations and load.[95] Default service suppliers must serve customers under the terms of the SMA.[96] In contrast, EGSs may offer customers a variety of retail products and contract structures, including products with different pricing approaches and contract durations.[97] In sum, the ALJs understandably rejected RESA's unsupported objections to the Settlement's treatment of NITS costs (adopted by the EGS Parties), and the Commission should as well.[98]

---

90 *Id.*

91 *See* RESA Exc., pp. 34-35.

92 See R.D., pp. 74-75; FE PA St. 2-R, pp. 9-10; FE PA St. 4-R, pp. 4-5; OCA St. 1-R, pp. 8-11; OCA St. 1-SR, pp. 18-20.

93 *See* RESA Exc., pp. 35-39; EGS Parties Exc., pp. 9-11.

94 RESA Exc., p. 38.

95 *See* R.D., p. 75.

96 *See* FE PA St. 4-R, p. 7.

97 *Id.*

98 RESA's argument that this purported "asymmetry" is "especially consequential" because the R.D. also recommends approval of the Settlement's above-PTC POR limitation (RESA Exc., p. 38) does not support any different result. As the ALJs explained, Pennsylvania's statutory framework and the PUC's regulations and decisions "do not require the Commission to structure default service products in a manner that guarantees suppliers compensation for every category of market uncertainty." R.D., p. 74.

RESA also excepts to the ALJs' determination that continuing FE PA's Commission-approved CPP mechanism during DSP VII is a reasonable approach to maintain diversity of supply products while also mitigating risk premiums if a fixed-price full-requirements product would extend into an unpriced capacity period.[99] However, RESA's Exception No. 5 repeats the same arguments advanced in its Initial and Reply Briefs and asserts that CPP "presents the same unresolved question" as NITS. The ALJs concluded that the CPP, like the Settlement's NITS provisions, "reduces the need for bidders to add risk premiums if a portion of a FPFR product extends into an unpriced capacity period, lowering the cost to default service customers."[100] The Commission should therefore approve the ALJs' recommendation regarding the CPP mechanism.

F. The ALJs Correctly Rejected Supplier Requests for a Successor CRP During DSP VII (RESA Excs. 2-3)

Under the settlement of FE PA's current PUC-approved default service program ("DSP VI"), the CRP is scheduled to end on May 31, 2027.[101] The DSP VI settlement, in which CRP issues were litigated, required FE PA to hold a collaborative to review CRP metrics with stakeholders, and FE PA held the collaborative as required.[102] Based on data compiled and discussed during the collaborative, the Company did not propose to implement a successor CRP during DSP VII, and the Settlement adopted FE PA's proposal.[103]

In its Exceptions (p. 26), RESA contends that the data collected by FE PA in accordance with the DSP VI settlement show that the CRP should be changed instead of eliminated, particularly given evidence showing cumulative CRP customer savings in excess of $750,000

---

99 *See* R.D., p. 85.

100 *Id.*, p. 85.

101 *See* R.D., p. 30 (Finding of Fact No. 86).

102 *Id*.

103 R.D., p. 30 (Finding of Fact Nos. 86-87); FE PA St. 4-R, pp. 8-9.

between January 2025 and February 2026 and Mr. Lacey's testimony regarding new "potential reforms" to the CRP. RESA also suggests that elimination of the CRP is inconsistent with the R.D.'s conclusions that customers remain free to shop.[104]

RESA's Exceptions have no merit and are little more than an effort to obscure the actual record and relitigate the DSP VI settlement. FE PA's CRP is scheduled to expire on May 31, 2027, in accordance with the Commission-approved settlement in the DSP VI proceeding.[105] The DSP VI settlement required FE PA to address "whether a successor CRP should be implemented and is necessary and provide the reasons for [its] proposal" which FE PA indisputably did in proposing that it should not be implemented and providing testimony on the collaborative and metrics showing declining supplier participation and customer interest.[106] The OCA also provided further evidence of CRP customers ending up with contract prices in excess of the applicable PTC during DSP VI.[107] And RESA does not dispute the simple fact that not a single participant in the CRP collaborative, including RESA, asked that the CRP be continued.[108]

The ALJs properly concluded that RESA has the burden of proof as a proponent for a successor CRP in DSP VII and further analysis and reporting.[109] Furthermore, the ALJs properly found that RESA (as well as WGL/TSE, which did not except to the ALJs' CRP findings) had not established that a successor CRP was in the public interest given the significant numbers of customers rolling onto contracts at higher prices and only one supplier signed up to accept CRP

---

104 *See* RESA Exc., p. 18.

105 R.D., p. 30 (Findings of Fact Nos. 85-86) (noting that the CRP is scheduled to terminate on May 31, 2027, under the DSP VI settlement and OCA and CAUSE-PA opposed continuation of the CRP in the DSP VI proceedings).

106 R.D., p. 162; FE PA St. 4-R, p. 9.

107 R.D., p. 159 (summarizing OCA testimony and analysis of prices paid by CRP participants).

108 R.D., p. 30 (Finding of Fact No. 86); FE PA St. 4-R, p. 9.

109 R.D., p. 162.

enrollees despite the reforms to FE PA's CRP that had been implemented in DSP VI.[110] And contrary to RESA's Exceptions, there is no conflict between concluding that an EDC-sponsored referral mechanism should not be adopted and a customer's ability to shop. Without a successor CRP, the additional harm of rollover contracts, with higher prices after a PTC discount is eliminated without any change in any customer's freedom to shop for generation supply. The Commission should therefore deny RESA's CRP-related Exceptions.

III. CONCLUSION

For the reasons set forth above, the Commission should deny the Exceptions of the Non-Settling Parties and Infinity and adopt the Recommended Decision without modification.

Respectfully submitted,

Kenneth M. Kulak (Pa. No. 75509)
Brooke E. McGlinn (Pa. No. 204918)
Maggie E. Curran (Pa. No. 330545)
Morgan, Lewis & Bockius LLP
2222 Market Street
Philadelphia, PA 19103-3007
Phone: 215.963.5384
ken.kulak@morganlewis.com
brooke.mcglinn@morganlewis.com
maggie.curran@morganlewis.com

Tori L. Giesler (Pa. No. 207742)
Angelina Umstead (Pa. No. 309615)
FirstEnergy Service Company
341 White Pond Drive
Akron, OH 44320
Phone: (610) 921-6202
tgiesler@firstenergycorp.com
aumstead@firstenergycorp.com

Dated: September 8, 2026

Counsel for FirstEnergy Pennsylvania Electric Company

[110] R.D., p. 163; *see also id.*, p. 161 (referencing CAUSE-PA testimony regarding DSP VI CRP reforms).