

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**Petition of FirstEnergy Pennsylvania
Electric Company for Approval of a
Default Service Program**

**Public Meeting held October 22, 2026
3060298-OSA
Docket No. P-2026-3060298**

MOTION OF CHAIRMAN STEPHEN M. DeFRANK

Before the Commission is the Joint Petition for Non-Unanimous Settlement (Settlement), Recommended Decision, and Exceptions thereto in the matter involving FirstEnergy Pennsylvania Electric Company's (FirstEnergy or the Company) Petition for approval of its seventh proposed default service program (DSP VII). DSP VII covers the time period from June 1, 2027, to May 31, 2031. The Settlement was filed on July 2, 2026, and entered into between FirstEnergy, the Office of Consumer Advocate, the Office of Small Business Advocate, the Coalition for Affordable Utility Services and Energy in Pennsylvania, Walmart, and Duquesne Light Company. Presiding Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon issued their Recommended Decision (R.D.) on August 21, 2026, approving the Settlement without modification.¹

The Settlement includes a number of provisions that I believe are in the public interest and warrant approval. These include, but are not necessarily limited to, the following:

- Inclusion of long-term fixed price full requirements contracts that cover a term of five years.

Such contracts should help provide long-term price signals and revenue stability to wholesale electricity market participants, which in turn may assist in more orderly planning and construction of generation assets.

- Removal of the Network Integrated Transmission Service (NITS) Charge from pricing in FirstEnergy's Supplier Master Agreement (SMA) entered into with wholesale suppliers.

Transmission pricing has evolved from a period of relative consistency to increased volatility. The volatility in these markets has made projecting future prices more challenging. Therefore, removal of NITS from the SMA will help wholesale bidders to maintain their focus on the energy and capacity market. In turn, this will allow the electric distribution company (EDC), as the load-serving entity, to focus on more accurately projecting and assessing the transmission price component.

- Utilization of the Maximum Registered Peak Load (MRPL) provisions to designate net-metering account classification.

The Commission has approved similar MRPL provisions in three other EDCs; UGI Utilities Inc.-Electric Division, Citizens' Electric Company of Lewisburg, and PPL Electric Utilities Corporation. I continue to believe MRPL provisions more appropriately designate a customer's

¹ R.D. at 237.

default service rate class based on their net demand contribution impact to EDCs' power purchasing and grid management.

- Inclusion of Time-of-Use Rates

Consistent with the requirement of the Electricity Generation Customer Choice and Competition Act, Act 129 of 2008,² the Settlement includes time-of-use rates to be offered to all residential and commercial customers with smart meters.

- Enhanced Purchase of Receivable (POR) access restrictions

FirstEnergy will phase out its existing "clawback" mechanism in favor of more stringent restrictions for electric generation suppliers (EGS) to access the Company's POR program. I note the Company's POR program is voluntary, meaning that FirstEnergy is not required to offer it and EGSs are not required to participate in it. In any event, these measures will help to mitigate the documented concerns about the excessive levels of residential uncollectible expenses attributable to EGS accounts receivable.

I commend the parties to the Settlement for reaching these various terms and support them along with the majority of the other provisions included as I contend they are in the public interest. However, I take this opportunity to discuss provisions of the Settlement that I believe warrant further review and consideration.

Return of Customers to Default Service at Contract Expiration and Quarterly Affirmation for Variable Rate Contracts

The Settlement includes a novel provision that would require residential customers to take affirmative action to remain with an EGS after the fixed-duration contract expires,³ essentially deviating from the Commission's existing regulations. Failure to do so would result in the customer reverting back to default service. Further, the Settlement requires that customers provide quarterly affirmation when an EGS reverts them to a variable rate. FirstEnergy asserts that this is needed to ensure customers make intentional choices and in support of affordability. FirstEnergy notes that in 2025, its residential customers paid \$82 million more with EGSs than they otherwise would have with default service.⁴

While the claims on the record here do raise obvious concerns, I am hesitant to make such profound revisions at this time in the retail electric marketplace of a single EDC. First, Section 54.10 of the Commission's regulations underlies the existing market rules applicable to these circumstances, permitting EGSs to retain customers upon contract expiration after proper notice.⁵ Second, I am unable to ascertain the root cause of the increased costs highlighted in the Settlement. Third, I question whether it is appropriate to make this modification in a single service territory or if such a determination is best implemented universally across the state, for instance, via rulemaking. Therefore, I am interested in conducting a more comprehensive and diligent review of this issue to ascertain what portion of the costs noted on the record here are the result of customers choosing value-added

² 66 Pa. C.S. §§ 2801-2815.

³ Settlement ¶ 66.

⁴ FirstEnergy St. 1 (Corrected) at 21-22; FirstEnergy St. 1 R at 10; FirstEnergy Exh. DMY-13.

⁵ 52 Pa. Code § 54.10.

products, renewable products, long-term fixed rates products, time-of-use, or other types of products versus those costs that were manifested due to customer ‘decision inertia.’ As well, should retail market modifications be needed, I am interested in determining how best to implement those modifications.

My preference therefore is to deny and eliminate these provisions from Paragraph 66 of the Settlement. Instead, I find it appropriate at this time to direct the Commission’s Office of Competitive Market Oversight (OCMO) to conduct a paper proceeding on an expedited basis intended to review these concerns statewide. This review would be separately docketed and culminate with any recommendations that OCMO deems prudent to be provided to the Commission by June 1, 2027, whether that be via a proposed rulemaking, order, advisory memo, report, or any other transmittal deemed appropriate.

Since the Settlement includes provisions in direct contrast to existing regulations, the parties also seek a waiver of the Commission’s regulations at Section 54.10(3) for the time-period that FirstEnergy’s DSP VII is in effect. As noted above, this regulation addresses what happens when an electric supply contract expires and permits EGSs to retain customers upon contract expiration after providing proper notice. Since I propose to remove the aforementioned provisions from Paragraph 66 of the Settlement, I would also propose to render the associated waiver request as moot.

I acknowledge this action involves modifying the instant Settlement and may result in parties’ withdrawal from the Settlement. Further, I acknowledge that such potentiality may result in this proceeding passing the nine-month period for the Commission to issue a final order as required by the Public Utility Code. Section 2807(e)(3.6)⁶ states in pertinent part:

If the commission fails to issue a final order on the plan within nine months of the date that the plan is filed, the plan shall be deemed to be approved and the default service provider may implement the plan as filed.

I highlight the phrase “...*the default service provider **may** implement the plan as filed.*”⁷ Should the Settlement be withdrawn, I ask that FirstEnergy consider acting in good faith to not implement the DSP VII as originally filed in order to permit the Commission time make a prudent and final determination as expeditiously as possible.

THEREFORE, I MOVE THAT:

1. The Exceptions filed by Shipley Choice, LLC d/b/a Shipley Energy, Interstate Gas Supply, LLC d/b/a IGS Energy, Town Square Energy East, LLC, WGL Energy Services, Inc., the Retail Energy Supply Association, Constellation Energy Generation, LLC, and Constellation NewEnergy, Inc. are approved in part and denied in part, consistent with this motion.

⁶ 66 Pa. C.S. § 2807(e)(3.6).

⁷ *Id.* (emphasis added).

2. The Exceptions filed by the Customer Generator Coalition, the Solar Energy Industries Association, the Coalition for Community Solar Access, and Dimension PA 1, LLC, are denied, consistent with this Motion.
3. The Recommended Decision of Administrative Law Judges Mark A. Hoyer and Erin L. Gannon issued on August 21, 2026, at the above captioned docket, is adopted, as modified, consistent with this Motion.
4. The Joint Petition for Approval of Non-Unanimous Settlement, filed at the above captioned docket, is approved as modified by this Motion
5. Following the expiration of the withdrawal period set forth in Ordering Paragraph 6, and absent a withdrawal, the Joint Petition for Non-Unanimous Settlement is deemed approved as modified by this Motion, and First Energy Pennsylvania Electric Company is directed to make all compliance filings necessary for the implementation of its Default Service Program.
6. Consistent with Paragraph 78 of the Joint Petition for Non-Unanimous Settlement, any Joint Petitioner may elect to withdraw from the Settlement by written notice filed with the Secretary of the Commission and service upon all Joint Petitioners within five (5) business days after entry of the Commission's Opinion and Order modifying the Settlement; and in the event of such withdrawal, the matter shall proceed consistent with the terms and the Settlement and applicable Commission procedure for an expeditious final disposition.
7. The Office of Special Assistants draft an Opinion and Order consistent with this Motion.

October 22, 2026
Date



Stephen M. DeFrank
Chairman