

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

**Petition of FirstEnergy Pennsylvania
Electric Company for Approval of Its
Default Service Program for the Period
from June 1, 2027 to May 31, 2031**

Public Meeting held October 22, 2026

Docket No. P-2026-3060298

STATEMENT OF COMMISSIONER KATHRYN L. ZERFUSS

Today we consider FirstEnergy Pennsylvania Electric Company's (FirstEnergy) seventh default service program, a filing that raises longstanding and emerging questions about how we protect customers. My consideration is guided by three core values: affordability, informed customer choice, and public outreach and participation.

First and foremost, I support the settlement's requirement that residential customers who shop with electric generation suppliers (EGSs) confirm their intent to stay with their chosen EGS when their fixed-rate term is about to expire. This would return customers to default service if and when no such consent is granted.

The record supports this approach. In 2025, FirstEnergy's residential shopping customers collectively paid \$82 million more to EGSs than they would have paid for default service, even after factoring in customers who saved money by switching to an EGS.¹ In that same year, more than 80% of the EGSs serving FirstEnergy's residential customers charged rates above the applicable price-to-compare (PTC) rate.² The record also documents markedly higher rates of involuntary service termination among residential shopping customers.³

The \$82 million figure deserves emphasis. It is not a tally that ignores the customers who benefited from shopping. It is the amount FirstEnergy's residential shopping customers paid above what they would have paid for default service in 2025. That finding should carry real weight when we decide whether an additional consumer safeguard is warranted. I do not know how much longer we need to study a problem that this record already documents, and quite thoroughly. The question is not whether more can be learned, but whether there is sufficient evidence to approve these protections.

Under the settlement and the Recommended Decision, for all new residential EGS agreements entered into after June 1, 2027, customers will return to default service at the end of the fixed-rate term unless they affirmatively choose to remain with their supplier in response to

¹ Recommended Decision at 31 & n.148 (Aug. 21, 2026) (citing FirstEnergy St. 1 at 21–22; FirstEnergy St. 1-R at 10; FirstEnergy Exh. DMY-13).

² *Id.* at 31 & n.149 (citing FirstEnergy St. at 21; FirstEnergy Exh. DMY-13).

³ *Id.* at 31–32 & n.150 (citing *CAUSE-PA St.* 1 at 23–25; FirstEnergy St. 1-R at 9; FirstEnergy Exh. DMY-10).

the required notices.⁴ At enrollment, customers will be informed of and agree to this arrangement. This mechanism preserves customer choice while adding an important safeguard, particularly for our most vulnerable customers. The required expiration notices then give the customer an opportunity to remain with the same supplier, select another supplier, or receive default service.⁵

These safeguards support informed consent while preserving customers' abilities to choose competitive supply. This intermediary consumer protection step does not prohibit customers from remaining with their current EGS or switching to a new one—even if the variable rate is higher than the default service provider's price-to-compare rate.⁶ Currently, customers may be moved to a higher variable rate without realizing it, leaving them uninformed and unprotected against higher costs.

The Electricity Generation Customer Choice and Competition Act (Choice Act) allows customers to choose their electricity supplier; however, while the retail market is restructured, it is not fully deregulated. The Commission's responsibility to ensure just and reasonable public utility rates under 66 Pa.C.S. § 1301(a) continues alongside the Choice Act's protections for informed customer choice. In *Retail Energy Supply Association v. Pennsylvania Public Utility Commission*, for example, our Commonwealth Court affirmed that competition must be reconciled with the Act's protections for access and affordability, upholding Commission-approved shopping protections for customer assistance program participants based on demonstrated harm and the absence of reasonable alternatives.⁷

The same reasoning applies with equal force in this case: protecting customer choice does not require the Commission to leave documented affordability concerns unaddressed. The record of residential customers paying above the PTC supports requiring an affirmative decision at the expiration of a covered fixed-rate term. The settlement preserves customers' supplier options rather than foreclosing them. This measure in no way prevents the residential customer from affirming consent to stay with the same EGS or to switch to another EGS instead of returning to the default supplier. Nor does it prevent a customer from selecting niche plans (such as green plans) even if those plans come with a higher monthly bill.⁸

The measure is also wholly consistent with the statutory text, which preserves the customer's "ultimate choice" and requires direct oral confirmation or "written evidence of the

⁴ Joint Petition for Non-Unanimous Settlement ¶ 66, at 17 (filed July 2, 2026); 52 Pa. Code § 54.10(1)–(2).

⁵ *Id.*; Recommended Decision at 195–196.

⁶ Joint Petition for Non-Unanimous Settlement ¶¶ 66–67, at 17.

⁷ See 66 Pa.C.S. §§ 1301(a), 2806(a), 2807(d)(1)–(2); *Retail Energy Supply Ass'n v. Pa. Pub. Util. Comm'n*, 185 A.3d 1206 (Pa. Cmwlth. 2018) (en banc) (*RESA*), slip op. at 24–27, 29, 34–37. *RESA* upheld CAP-shopping restrictions upon a showing of harm and no reasonable alternative, while recognizing the customer's continuing ability to make a supplier choice. The protection here operates through an affirmative-choice requirement, not a prohibition on choosing an EGS or an above-PTC product. That distinction supports applying *RESA*'s reasoning to a safeguard directed at informed customer choice.

⁸ See Joint Petition for Non-Unanimous Settlement ¶¶ 66–67, at 17 (filed July 2, 2026) (preserving supplier choice; addressing purchase-of-receivables eligibility); see also Recommended Decision at 196, 198–199.

customer's consent" to a supplier change.⁹ The contract contemplated by the settlement provides just that consent, with another opportunity to choose at expiration. Waiving the regulatory requirement of automatic renewal preserves informed choice while addressing the affordability concerns in FirstEnergy's territory, which includes nearly two million residential customers.¹⁰

At a time when rising utility costs are straining household budgets, we must act now to strengthen protections against higher rates that customers may never have knowingly chosen. Delaying the safeguards could leave the Commonwealth's nearly two million First Energy customers exposed to avoidable costs when they can least afford them. Time is a luxury that we cannot afford.

Second, this proceeding also presents a distinct and important issue concerning agricultural customer-generators. Beyond our responsibility to safeguard residential customers, we must also consider how our policies affect agricultural customers. The treatment of biogas systems under the settlement's Maximum Registered Peak Load provisions is concerning.¹¹ As I explained in PPL's most recent rate-base proceeding,¹² an anaerobic digester can be an integral part of a working farm. It converts manure and other organic material into gas that fuels a generator. The electricity can serve milking, refrigeration, ventilation, and other farm needs before the remainder reaches the grid. These systems also help manage waste, and the investments made in them matter to both the families who operate those farms and the economic wellbeing of the Commonwealth.

In PPL, testimony from farmers and agricultural leaders' opposition to the settlement supported a narrow clarification for qualifying on-farm biogas systems. The record showed continuous generation and substantial electricity use on the farm, distinguishing those operations from projects built principally to export power with little independent on-site use. Simply put, they are not merchant generators, and the Commission acknowledged as much in its decision. I viewed that decision as an important step toward recognizing those operational differences in the application of similar "maximum registered peak load" provisions.¹³

The settlement before us was filed on July 2nd of this year, only three weeks after the Commission's June 11th decision in the PPL case. I recognize that the timeline may have limited the opportunity for FirstEnergy and the settling parties to evaluate and incorporate that approach within this proceeding.

I am disappointed with this provision.

⁹ 66 Pa.C.S. §§ 2806(a), 2807(d)(1)–(2).

¹⁰ 52 Pa. Code §§ 5.43(b), 54.10(3); Joint Petition for Non-Unanimous Settlement ¶ 73, at 19; *see also* Recommended Decision at 196–197 & n.827.

¹¹ Joint Petition for Non-Unanimous Settlement ¶¶ 36–38, at 11, ¶¶ 42–43, at 12 (filed July 2, 2026).

¹² *Pa. PUC v. PPL Electric Utils. Corp.*, Docket Nos. R-2025-3057164, *et al.*, Motion of Commissioner Kathryn L. Zeffuss at 2–4 & nn. 3, 6 (June 4, 2026); Opinion and Order at 189–92, 223–24, Ordering Paragraphs 4–5 (entered June 11, 2026).

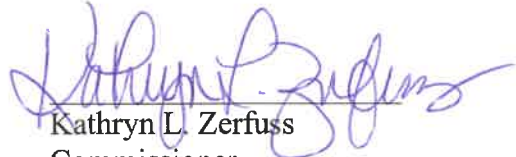
¹³ *Pa. PUC v. PPL Electric Utilities Corp.*, Docket Nos. R-2025-3057164, *et al.*, Motion of Commissioner Kathryn L. Zeffuss at 2–3 & n.6 (June 4, 2026); Opinion and Order entered June 11, 2026, at 190–91, 223–24.

Even so, each proceeding before this Commission must be decided under the governing law and on its own record—and in this case, the record does not provide a basis for modifying the settlement, although I wish it did. But that limitation does not mean that agricultural operations will be unaffected by the settlement’s provisions. Changes to customer classifications and compensation for surplus generation can meaningfully impact a working farm, even when producing electricity is only one part of its operations. Understanding those consequences requires attention to the circumstances of the farms involved. Although FirstEnergy recognizes the distinction drawn in PPL concerning biogas,¹⁴ the record has no comparable agricultural objection or farm-specific evidentiary showing that supported relief there.

I reiterate some of my past comments on the importance of outreach and public participation in the Commission’s work. Customers and stakeholders must have a meaningful opportunity to understand a proposal, explain its practical effects, and contribute to the record before a decision is made. I encourage FirstEnergy PA and all of Pennsylvania’s electric distribution companies to engage agricultural partners early when developing proposals that may affect these operations.

I likewise encourage farmers, agricultural organizations and others familiar with biogas systems to participate. Their experience can help the Commission understand operating needs, investments made in reliance on existing arrangements, and the costs and benefits relevant to other customers. That participation helps build the record necessary to evaluate potential protections and achieve consistency across service territories. A well-developed record gives the Commission the strongest foundation for decisions that advance affordability, reliability, and safety.

I offer my support for the settlement, unmodified, despite my concerns above. I thank the Administrative Law Judges, Commission staff, and the parties for their work on this case.


Kathryn L. Zarfuss
Commissioner

DATE: October 22, 2026

¹⁴ FirstEnergy Pennsylvania Electric Company Reply Brief at 23–24 & n.79, 28 & n.103 (July 22, 2026). This is FirstEnergy’s characterization of PPL, not a finding that any particular FirstEnergy farm meets or does not meet the PPL exemption.