

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

Public Meeting held October 22, 2026

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair, Statement, Dissenting
John F. Coleman, Jr.
Ralph V. Yanora
Kathryn L. Zerfuss, Statement, Dissenting

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

P-2026-3060298

OPINION AND ORDER

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BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy (collectively, the EGS Parties), the Customer-Generator Coalition (CGC), Town Square Energy East, LLC (Town Square) and WGL Energy Services, Inc. (WGL) (collectively, Town Square and WGL or Town Square/WGL), the Solar Energy Industries Association and the Coalition for Community Solar Access (collectively, the Joint Solar Advocates or JSA), the Retail Energy Supply Association (RESA), Dimension PA 1, LLC (Dimension), and Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. (Constellation) (collectively, the supplier intervenors), filed on August 31, 2026, to the Recommended Decision (R.D.) of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon (collectively, the ALJs), issued on August 21, 2026, in the above-captioned proceeding. The ALJs recommended that the Commission approve, without modification, the Joint Petition for Non-Unanimous Settlement (Joint Petition, Non-Unanimous Settlement, or Settlement), filed by FirstEnergy Pennsylvania Electric Company (FirstEnergy or the Company), 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)

(collectively, the Joint Petitioners or Settling Parties) in this matter.¹ FirstEnergy, the OCA, and CAUSE-PA filed Replies to Exceptions on September 8, 2026.

For the reasons stated, *infra*, we shall: (1) grant, in part, and deny, in part, the Exceptions filed by the EGS Parties, Town Square and WGL, RESA, and Constellation; (2) deny the Exceptions filed by CGC, JSA, and Dimension; (3) modify the ALJs' Recommended Decision; and (4) grant the Joint Petition and approve the Non-Unanimous Settlement, as modified,, consistent with this Opinion and Order.

I. Introduction and Background

FirstEnergy is an electric distribution company (EDC) certificated as a public utility permitted to operate within the Commonwealth of Pennsylvania. FirstEnergy is a wholly owned subsidiary of FirstEnergy Corporation that provides electric service to approximately 2.1 million customers throughout Pennsylvania. The Company was formed through the combination of several predecessor Pennsylvania electric utilities after approval by the Commission. Prior to January 1, 2024, FirstEnergy consisted of four separate EDCs in Pennsylvania: Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn) (collectively, Predecessor Companies). However, these companies have since been merged into a single entity,

¹ The Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and West Penn Power Industrial Intervenors (collectively, the Industrial Customer Groups), and The Pennsylvania State University (PSU), which were parties to this proceeding, authorized the Joint Petitioners to represent that they did not oppose the Settlement. Duquesne supported the provisions in Section II.I. of the Joint Petition (Supplier Coordination Tariff and Retail Shopping Changes), but took no position on the other provisions of the Settlement. Conversely, the following parties did not join the Joint Petition and indicated that they opposed the Settlement: Constellation, CGC, Dimension, Penn Renewables LLC (Penn Renewables), the EGS Parties, the Joint Solar Advocates, and Town Square and WGL. *See* Joint Petition at 1-2, n.1.

known as FirstEnergy Pennsylvania Electric Company, with each of the four Predecessor Companies operating as its own rate district (Rate District) under FirstEnergy's tariff. *See Joint Application of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, Keystone Appalachian Transmission Company, Mid-Atlantic Interstate Transmission, LLC, and FirstEnergy Pennsylvania Electric Company, et al.*, Docket Nos. A-2023-3038771, *et al.* (Final Order entered December 7, 2023) (*FirstEnergy PA Merger Proceeding*). FirstEnergy is the electric generation default service provider within the Rate Districts in its service territory for retail customers who do not choose an alternative electric generation supplier (EGS) or whose EGS fails to provide service. Original Default Service Plan Petition (Original Petition) at 3.

FirstEnergy is an EDC as defined in the Electricity Generation Customer Choice and Choice Act (Choice Act or Competition Act), 66 Pa.C.S. §§ 2801-2815, as amended by Act 129 of 2008 (Act 129) and, as noted above, is the electric generation default service provider within the Rate Districts for retail customers who do not choose an alternative EGS or whose EGS fails to provide service. Original Petition at 3. As the default service provider in its service territory, FirstEnergy is required to file a default service plan with the Commission that sets forth how it will meet its default service obligations, including a strategy for procuring generation supply, a schedule for implementation, and a rate design to recover the Company's reasonable costs. *See* 66 Pa.C.S. § 2807(e)(3.6). FirstEnergy's current default service program (DSP) was approved by the Commission on August 4, 2022. *See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Default Service Programs for the Period Beginning June 1, 2023 through May 31, 2027*, Docket Nos. P-2021-3030012, *et al.* (Final Order entered August 4, 2022, adopting Recommended Decision issued June 29, 2022) (*FirstEnergy DSP VI*). Thus, the FirstEnergy DSP VI expires on May 31, 2027.

In this proceeding, FirstEnergy seeks approval of its seventh Default Service Program (DSP VII or DSP VII Program). Therein, FirstEnergy identified and described the Company's procurement plans, implementation plan, contingency plans, and rate design for the recovery of all reasonable costs on a full and current basis. Original Petition at 5-25. FirstEnergy's Original Plan has been modified by the Joint Petition.

II. History of the Proceeding

On February 3, 2026, FirstEnergy filed the above-captioned DSP VII Petition requesting that the Commission approve its DSP VII, which the Company represented was designed to procure a prudent mix of long-term, short-term, and spot market generation supplies and to ensure that default service customers have access to an adequate and reliable supply of generation at the least cost over time for the period beginning June 1, 2027 and ending May 31, 2031. R.D. at 1.

In its Original Petition, FirstEnergy requested that the Commission approve the Company's proposed DSP VII, including the procurement plan, contingency plans, rate design changes and tariffs, and a *pro forma* supplier master agreement (SMA), for default supply service for the period beginning June 1, 2027 through May 31, 2031. FirstEnergy also requested that the Commission specifically find, pursuant to 66 Pa.C.S. § 2807(e)(3.7), that: (1) its DSP VII includes prudent steps necessary to negotiate favorable generation supply contracts; (2) its DSP VII includes prudent steps necessary to obtain least-cost generation supply on a long-term, short-term, and spot market basis; and (3) neither FirstEnergy nor its affiliates have withheld from the market any generation supply in a manner that violates federal law. R.D. at 1-2.

On February 20, 2026, the OSBA filed a Notice of Intervention and Public Statement. R.D. at 2.

On February 21, 2026, notice of the Company’s DSP VII filing and of the scheduled Prehearing Conference was published in the Pennsylvania Bulletin at 56 Pa.B. 1085. R.D. at 2.

On March 9, 2026, the OCA filed a Notice of Intervention and Public Statement, and Answer.

Additionally, as set forth in the table below, Petitions to Intervene were filed by the following Parties:

Party	Date Filed
CAUSE-PA	February 10, 2026
Penn Renewables	February 19, 2026
EGS Parties	February 23, 2026
Industrial Customer Groups	February 24, 2026
Dimension PA 1 LLC (Dimension)	March 5, 2026
CGC	March 9, 2026
WGL	March 9, 2026
Town Square	March 9, 2026
PSU	March 10, 2026
Joint Solar Advocates	March 13, 2026
Constellation	March 16, 2026
Duquesne	March 16, 2026
Walmart	March 17, 2026
RESA	March 17, 2026

R.D. at 3.

Written direct, rebuttal and surrebuttal testimony were submitted by various parties on April 29, 2026, May 28, 2026, and June 11, 2026, respectively. R.D. at 4.²

² See the Appendix attached to the Recommended Decision for the list of admitted testimony and exhibits in this proceeding.

On June 15, 2026, an evidentiary hearing was held. In lieu of oral rejoinder testimony, FirstEnergy submitted written rejoinder testimony. FirstEnergy's witnesses, Mr. David M. Young and Mr. Gregory F. Hussing, the OCA's witness, Dr. Serhan Ogur, and CGC's witness, Mr. James A. Heidell, were cross-examined, and all Parties' pre-served written testimony and exhibits were admitted into the evidentiary record without objection. R.D. at 4.

On July 2, 2026, FirstEnergy filed the instant Joint Petition, which was executed by counsel for each of the Joint Petitioners. Statements in Support by the Settling Parties were attached as Statements B through F. The Settling Parties requested that the Commission approve FirstEnergy's DSP VII, with certain modifications. The Joint Petitioners also explained that the Industrial Customer Groups and PSU authorized the Joint Petitioners to represent that they did not oppose the Settlement. R.D. at 5.

Also on July 2, 2026, Penn Renewables filed a letter stating that it opposed the Settlement. R.D. at 5.

On July 10, 2026 and July 22, 2026, respectively, the following Parties filed Main Briefs and Reply Briefs: FirstEnergy,³ the OCA, CAUSE-PA, CGC, Constellation, Dimension, the EGS Parties, the Joint Solar Advocates, RESA, and Town Square and WGL.⁴ R.D. at 5.

Also on July 10, 2026, FirstEnergy filed Joint Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs to the Joint Petition. Proposed findings of fact, conclusions of law, and ordering paragraphs by CGC, Constellation, Dimension, the

³ FirstEnergy filed Highly Confidential and Public versions of its Main and Reply Briefs. R.D. at 5, n.2.

⁴ Town Square and WGL filed joint Main and Reply Briefs. They filed a Highly Confidential and Public version of the Reply Brief. R.D. at 5, n.3.

EGS Parties, Joint Solar Advocates, Town Square and WGL, and RESA, respectively, were filed as attachments to their respective briefs in opposition to the Settlement. R.D. at 5-6.

On July 30, 2026, FirstEnergy filed an unopposed motion seeking admission of an interrogatory verification and asking the ALJs to disregard the rejoinder testimony of FirstEnergy's witness, Ms. Carlixta De La Rosa, set forth in FirstEnergy Statement 4RJ. R.D. at 6.

On August 21, 2026, the ALJs issued an interim order granting FirstEnergy's motion and closing the evidentiary record, which consists of a 220-page transcript; the statements and exhibits of the Parties with verifications of the sponsoring witnesses; the Joint Petition with attachments; and the Parties' Main Briefs and Reply Briefs. R.D. at 6.

Also on August 21, 2026, the Commission issued the Recommended Decision of ALJs Hoyer and Gannon, wherein they recommended that the Commission approve FirstEnergy's DSP VII, as modified by the Non-Unanimous Settlement.

On August 25, 2026, Infinity Capital, LLC (Infinity) filed Exceptions to the Recommended Decision.

On August 31, 2026, the EGS Parties, CGC, Townsquare and WGL, JSA, RESA, Dimension, and Constellation filed Exceptions to the Recommended Decision.

Also, on August 31, 2026, Spark Energy, LLC (Spark) filed a Petition seeking the Commission's approval to intervene in the proceeding or, in the alternative, for the Commission to address the Exceptions of a non-party (Petition for Intervention). On September 1, 2026, CAUSE-PA filed Preliminary Objections (POs) and Request for

Expedited Relief to dismiss Spark’s Petition for Intervention and strike Spark’s Exceptions. On September 2, 2026, Spark filed a letter response to CAUSE-PA’s request for expedited relief.

On September 4, 2026, the Commission issued a Secretarial Letter (*September 2026 Secretarial Letter*), in which the Commission: (1) denied Spark’s Petition for Intervention; and (2) struck Spark’s Exceptions from consideration as filings by a non-party. In addition, based upon the Commission’s denial of Spark’s intervention and rejection of the Exceptions, the Commission found that CAUSE-PA’s POs in opposition were denied as moot.

On September 8, 2026, FirstEnergy, the OCA, and CAUSE-PA filed Replies to Exceptions.

On September 11, 2026, Spark filed a Petition for Reconsideration from Staff Action (Petition for Reconsideration), seeking reconsideration of the *September 2026 Secretarial Letter*. On September 21, 2026, FirstEnergy and CAUSE-PA each filed an Answer to the Petition for Reconsideration. By Opinion and Order entered October 1, 2026, the Commission denied Spark’s Petition for Reconsideration.⁵

⁵ On October 7, 2026, UGI Energy Services, LLC (UGIES) filed a letter it referred to as “public comment.” We will not consider the letter because it was late-filed, and UGIES is not a party to this proceeding.

III. Legal Standards

A. Burden of Proof

In this proceeding, the Company seeks approval of its plan to procure default service supply and, as such, has the burden of proving that its proposed DSP VII complies with the legal requirements. The proponent of a rule or order in any Commission proceeding bears the burden of proof, 66 Pa.C.S. § 332(a), and therefore, the Company has the burden of proving its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Company's evidence must be more convincing, by even the smallest amount, than the evidence presented by the other parties. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by a utility of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the utility shifts to the other parties. If the evidence presented by the other parties is of co-equal value or "weight," the burden of proof has not been satisfied. The Company now has to provide some additional evidence to rebut that of the other parties. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always

remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001). However, a party that offers a proposal in addition to what is sought by the original filing bears the burden of proof for such a proposal. *Pa. PUC v. Metro. Edison Co.*, Docket No. R- 00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (Order entered January 11, 2007); *Joint Default Service Plan for Citizens' Electric Co. of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013 (Citizens' Electric Co.)*, Docket Nos. P-2009-2110798 and P-2009-2110780 (Order entered February 26, 2010).

B. Default Service

The Choice Act, 66 Pa.C.S. §§ 2801-2815, as amended by Act 129 requires that default service providers acquire electric energy through a “prudent mix” of resources that are designed to: (1) provide adequate and reliable service; (2) provide the least cost to customers over time; and (3) achieve these results through competitive processes that include auctions, requests for proposals, and/or bilateral agreements. 66 Pa.C.S. §§ 2807(e)(3.1), (3.4).

The Choice Act also mandates that customers have direct access to a competitive retail generation market. 66 Pa.C.S. § 2802(3). This mandate is based on the legislative finding that “[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity.” 66 Pa.C.S. § 2802(5). *See Green Mountain Energy Company v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002). Thus, a fundamental policy underlying the Choice Act is that competition is more effective than economic regulation in controlling the costs of generating electricity. 66 Pa.C.S. § 2802(5).

In addition to the foregoing statutory guidelines, the Commission has enacted default service Regulations, 52 Pa. Code §§ 54.181 to 54.190, and a Policy

Statement, 52 Pa. Code §§ 69.1801 to 69.1817, addressing DSPs. The Regulations first became effective in 2007 and were amended in 2011 to incorporate the Act 129 amendments to the Choice Act. *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Docket No. L-2009-2095604 (Final Rulemaking Order entered October 4, 2011) (*Act 129 Final Rulemaking Order*). The Commission has directed that EDCs consider the incorporation of certain market enhancement programs into their DSPs in order to foster a more robust retail competitive market. *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Order entered December 16, 2011) (*RMI IWP Tentative Order*), and *Intermediate Work Plan* (Final Order entered March 2, 2012) (*RMI IWP Final Order*).

C. Settlements

This Commission has a policy of encouraging settlements. *See* 52 Pa. Code § 5.231(a); *see also* 52 Pa. Code §§ 69.401, *et seq.*, relating to settlement guidelines for major rate cases, and our Statement of Policy relating to the Alternative Dispute Resolution Process, 52 Pa. Code § 69.391, *et seq.* This Commission has stated that results achieved through settlement are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort, and expense that otherwise would have been used in litigating the proceeding, while a Non-Unanimous Settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole, non-unanimous, or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

Default service proceedings are expensive to litigate, and the reasonable cost of such litigation is an expense recovered from customers by default service providers as approved by the Commission. Partial or full, as well as non-unanimous or

unanimous, settlements allow the parties to avoid the substantial costs of fully litigating a proceeding before the Commission, yielding expense savings for a company's customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991). The Joint Petitioners have reached a Non-Unanimous Settlement that resolves all issues among the Settling Parties in this proceeding. Because the Joint Petitioners request that the Commission enter an order in this proceeding approving the Non-Unanimous Settlement without modification, they share the burden of proof to show that the terms and conditions of the Non-Unanimous Settlement are in the public interest. *See* 66 Pa.C.S. § 332(a).

IV. Joint Petition for Approval of the Non-Unanimous Settlement

A. Terms and Conditions of the Non-Unanimous Settlement

The Joint Petitioners have agreed to the Non-Unanimous Settlement, reflecting the agreement among the Joint Petitioners as to the matters litigated by the Parties in this proceeding. The Joint Petitioners each filed Statements in Support of the Settlement. The following Parties opposed the Joint Petition, as discussed in Section V, *infra*: Constellation, CGC, Dimension, Penn Renewables, the EGS Parties, the Joint Solar Advocates, and Town Square and WGL.

The Joint Petition consists of a twenty-three page document outlining the terms and conditions of the Non-Unanimous Settlement. The following Exhibits and Statements regarding FirstEnergy's Revised DSP VII, setting forth its DSP as modified by the Non-Unanimous Settlement, were attached to the Joint Petition:

Exhibit A Procurement Schedule

Exhibit B Revised FirstEnergy Pennsylvania Electric Company Electric Service Tariff (Relevant Pages)

Statement A FirstEnergy's Statement in Support.

Statement B The OCA's Statement in Support.

Statement C The OSBA's Statement in Support.

Statement D CAUSE-PA's Statement in Support.

Statement E Walmart's Statement in Support.

Statement F Duquesne's Statement in Support.

The essential terms of the Joint Petition for Non-Unanimous Settlement are set forth in Section II of the Joint Petition, in Paragraph Nos. 13 through 73. Joint Petition at 6-19. The essential terms are set forth below and are printed *verbatim*, and for ease of reference, maintain the paragraph numbers and formatting that appear in the Non-Unanimous Settlement.

II. TERMS AND CONDITIONS OF SETTLEMENT

13. The Settlement consists of the following terms and conditions:

A. Procurement and Implementation Plans

(1) Term

14. FE PA's Revised DSP VII shall have a term of four years, beginning June 1, 2027 and ending May 31, 2031 ("DSP VII Term").

(2) Procurement Groups

15. Procurement Groups FE PA's default service customers shall be divided into three classes for purposes of default service procurement: the residential class, the commercial class, and the industrial class.

16. FE PA will maintain the same residential, commercial, and industrial class definitions that were approved by the Commission in the DSP VI proceeding, with one change. As discussed in Paragraph 36 below, the Company will classify default service customers with a peak demand or a maximum registered peak load ("MRPL") of 100 kilowatt ("kW") or above as industrial customers subject to the Company's Hourly Pricing Default Service ("HP") Rider.

(3) Residential and Commercial Class Procurement

17. Residential and Commercial Class Procurement FE PA will procure 100% of the supply required to serve residential and commercial default service customers during the DSP VII Term through a descending clock auction ("DCA") for full requirements service. Winning suppliers will bid on "tranches" corresponding to a percentage of the actual residential and commercial default service customer load and be responsible for fulfilling all the associated requirements of a load serving entity ("LSE") under their

agreements with PJM, including energy, capacity, transmission,^[6] ancillary services, PJM administrative expenses, as well as providing all necessary alternative energy credits described in Paragraph 30 below for Alternative Energy Portfolio Standards Act (“AEPS”) compliance.

18. The Joint Petitioners agree to the rules for the DCA set forth in FE PA Exhibit MP-3.

19. Each residential tranche is a fixed-price full requirements, load-following product. The fixed price will be established through FE PA’s DCAs.

20. During the DSP VII Term, contracts for approximately 10% of the residential class load will have terms of 60 months, contracts for approximately 45% of the residential class load will have terms of 12 months, and contracts for the remaining approximately 45% will have terms of 24 months.

21. FE PA’s independent evaluator shall administer the DCA process for the 60 month product consistent with the DCA process for the Company’s default service procurements. As part of that process, the independent evaluator shall include consideration of the 60-month product in any pre or post auction reports that it prepares during the

⁶ These transmission requirements exclude Regional Transmission Expansion Plan (RTEP) charges, Expansion Cost Recovery Charges; Reliability Must Run/generation deactivation charges associated with generating plans for which specific RMR charges begin after July 24, 2014; historical out-of-market tie line, generation, and retail customer meter adjustments; unaccounted for energy; or any Federal Energy Regulatory Commission (FERC) approved reallocation of PJM RTEP charges related to Docket No. EL05-121-009 (collectively, referred to as “non market based charges” or “NMB charges”). FE PA will continue to assume these NMB charges for both default service suppliers and EGSs that serve load in the Company’s service area, and the associated costs will be recovered from customers in a competitively neutral manner through FE PA’s non-bypassable Default Service Support (DSS) Rider. In addition, as discussed in Paragraph 29 below, beginning June 1, 2027, default service suppliers will not be responsible for Network Integration Transmission Service (NITS) or PJM charges associated with United States Department of Energy (DOE) emergency orders pursuant to Section 202(c) of the Federal Power Act.

normal course of administering auctions. Following the auction, the Company shall cause an independent market consultant to prepare a post-auction report assessing the reasonableness of the auction results for any 60-month product relative to contemporaneous market conditions, cost-to-serve estimates, supplier risk premiums, and prevailing market data available at the time of auction. The independent market consultant's report shall be submitted to the Commission in connection with the Commission's review of the auction results.

22. The full requirements contracts for the commercial class will include a fixed price for 100% of the supply and will be procured through DCAs in the same manner and at the same time as the residential class.

23. During the DSP VII Term, the commercial class full requirements product mix will be comprised of 12-month contracts (60%) and 24-month contracts (40%).

24. Each of the residential and commercial full requirements products will be procured through semi-annual auctions in February and September each year, with the exception that for the first auction year of the term, FE PA will hold auctions in January 2027, April 2027, and October 2027.

25. The procurement schedule for the residential and commercial class contracts are set forth in Exhibit A. Exhibit A is a revised version of FE PA Exhibit RJR-1.

(4) Industrial Class Procurement

26. The product for the industrial class, including customer-generators with an MRPL of 100 kW or above after June 1, 2029, is an hourly-priced service product based upon PJM real-time zonal hourly market prices. Suppliers will bid for the right to serve a portion of the hourly-priced service load for twelve-month terms. Winning suppliers will be paid the winning price bid in the hourly-priced auction and the hourly PJM real time zonal locational marginal price ("LMP").

27. FE PA will procure default service supply for the industrial class load annually as shown on Exhibit A.

B. Supplier Master Agreement

28. The Joint Petitioners agree to the form of the Supplier Master Agreement (“SMA”) that FE PA will execute with wholesale suppliers that are successful bidders in the Company’s default service supply auctions set forth in FE PA Exhibit RJR-2.

29. The Joint Petitioners agree to the following changes to the Predecessor Companies’ current Commission-approved SMAs as shown in FE PA Exhibit RJR-2: (1) modifications to reflect the changes in default service supplier responsibility for AEPS compliance discussed in Paragraph 30 below; (2) removal of PJM charges for NITS from the pricing under the SMA; (3) changes to add new PJM billing line items associated with emergency orders issued by DOE; and (4) revisions to clarify the true-up methodology for the capacity proxy price (“CPP”) used in FE PA’s auctions in the event PJM does not conduct a base residual auction (“BRA”) as discussed in Paragraph 34 below.

C. Alternative Energy Portfolio Standards Act Compliance

30. For DSP VII, FE PA will satisfy all of its AEPS Act requirements as part of the solicitation of default service supply. Under the SMA, winning suppliers of full requirements default service products in the Company’s service area will be responsible for meeting all Tier I and Tier II requirements, including solar photovoltaic requirements.

D. Contingency Plans

31. The Joint Petitioners agree that FE PA will continue utilizing the contingency plans approved in the DSP VI proceeding to address the following possible scenarios: (i) an individual solicitation is not fully subscribed or the Commission rejects the bid results from a solicitation; (ii) a winning supplier defaults prior to the start of the delivery period or at any time during the delivery period; and (iii) PJM

does not conduct its BRA in time for default service suppliers to incorporate capacity prices into their bids. Specifically, if a scheduled solicitation is not fully subscribed following the initial proposed procurement or if the Commission rejects the bid results from a solicitation, FE PA will rebid the unfilled tranches in the next scheduled procurement for which there is sufficient calendar time to include the tranches. For any unfilled tranches remaining, FE PA will purchase the necessary physical supply for the remaining tranches for that class through PJM administered markets. FE PA will not enter into hedging transactions to attempt to mitigate the associated price or volume risks to serve such unfilled tranches. FE PA will secure any AEPS Act compliance requirements for unfilled tranches at market prices.

32. If the Company is unable to procure Commission-approved 60-month fixed -price full-requirements (“FPFR”) contracts through the solicitation process, the Company shall promptly conduct a subsequent solicitation for 24-month FPFR contracts. To the extent the precise portfolio allocation among remaining contract terms differs from the residential supply mix described in Paragraph 20 above, the Company shall maintain a share of load served under 24-month FPFR contracts that is similar to the share of load served under 12-month FPFR contracts, unless otherwise authorized by the Commission. Any additional failures of auction success would default to FE PA’s contingency plan as originally proposed and described in Paragraph 31.

33. The Joint Petitioners agree that, in the event a winning bidder defaults prior to the start of or during the delivery period, FE PA will offer the unfilled tranches to the other qualified bidders who participated in the most recent solicitation of full-requirements, load-following products. FE PA may enter into an agreement with the qualified bidder(s) offering the best terms for the unfilled tranches resulting from the default, provided the prices offered by such bidder(s) are consistent with the original prices at which the unfilled tranches were procured giving due consideration to changes in market conditions from the time when the original tranches were procured. If FE PA is not able to enter into such an agreement and at least 30 calendar days remain prior

to the start of the delivery period, the Company will seek to bid the defaulted tranches in a separate supplemental competitive solicitation. If insufficient time exists to conduct an additional competitive solicitation, or if the supplemental solicitation is unsuccessful, FE PA will supply the tranches using PJM administered markets in the same manner described in the preceding paragraph.

34. The Joint Petitioners agree that if PJM does not conduct the BRA in time for default service suppliers to incorporate the auction results in their bids, the CPP will be equal to the clearing price in the most recent BRA conducted by PJM. During the delivery year for which the BRA results are not known, winning suppliers will be debited or credited (as applicable) any differences between the CPP and the actual capacity price utilizing their daily unforced capacity obligation by class and tranches served by class.

E. Independent Evaluator

35. The Joint Petitioners agree to the appointment of CRA International, Inc. d/b/a/ Charles River Associates (“CRA”) as the independent third-party evaluator for FE PA’s default service procurements.

F. Classification of Non-Residential Default Service Customers

36. The Joint Petitioners agree to the Company’s original proposal to introduce the MRPL into FE PA’s determination of eligibility for participation in the PTC Rider and HP Rider as set forth in the DSP VII Petition.

37. Customer-generators online prior to June 1, 2027 will be exempt from the MRPL proposal until June 1, 2029 as originally proposed in the DSP VII Petition.

38. For purposes of determining compensation for net excess generation for customer-generators taking service under the HP Rider, such compensation shall include capacity and line loss portions of the HP Rider until May 31, 2041, absent a material change in the capacity markets operated by PJM. In the event of such an occurrence, FE PA will notify and meet with parties to this Settlement, including Walmart,

to discuss the proposed changes and their impact on customer-generator compensation at least 30 days in advance of any Commission filing.

G. Rate Design and Cost Recovery

(1) Price To Compare Default Service Rate Rider

39. FE PA will continue to recover the cost of default service for the residential and commercial classes through its Price to Compare Default Service Rate Rider (“PTC Rider”) separately for each Rate District consistent with the PTC Rider approved by the Commission in the DSP VI proceeding. Default service rates established pursuant to the PTC Rider will consist of a single per-kilowatt hour energy charge, which will change semi-annually. These rates will continue to recover: (1) generation costs, transmission costs (excluding NMB charges described in footnote 6 above), and ancillary service costs; (2) supply management and administrative costs, as provided in 52 Pa. Code § 69.1808; and (3) applicable taxes. In addition, the default service rates will include a reconciliation component, or “E-Factor,” to recoup or refund, as applicable, under or over-collections from prior periods. The Joint Petitioners agree that over/undercollections of default service costs for the residential class will be reconciled every 12 months and default service costs for the commercial class will continue to be reconciled on a semi-annual basis.

40. Beginning June 1, 2027, the Company will amortize the cumulative reconciliation balance for the residential PTC Rider identified at the conclusion of each 12-month reconciliation period over the subsequent 12-month period through the E-Factor mechanism.

41. The Joint Petitioners agree that FE PA shall be permitted to file the PTC Rider set forth in Exhibit B attached to the Joint Petition to become effective as of June 1, 2027. Exhibit B is a revised version of FE PA Exhibit CDL-1 and incorporates the tariff change described in Paragraph 40 above.

(2) Hourly Pricing Default Service Rider

42. FE PA will continue to use its HP Rider approved by the Commission in the DSP VI proceeding to recover the cost of default service for industrial class customers, including customer-generators with an MRPL of 100 kW or above after June 1, 2027, subject to the exemption described in Paragraph 37 above. Default service rates established pursuant to the HP Rider will continue to be based upon the PJM hourly LMP for each Rate District's respective PJM-designated transmission zone plus associated costs, such as capacity, ancillary services, PJM administrative expenses and costs to comply with AEPS requirements that are incurred to provide hourly pricing default service. The Joint Petitioners agree that the default service rates also will include an E-Factor to continue reconciling costs and revenues on a semi-annual basis.

43. The Joint Petitioners agree that the Company shall be permitted to file the HP Rider set forth in FE PA Exhibit CDL-2 to become effective as of June 1, 2027, subject to the Company's commitment regarding HP Rider calculations for purposes of excess generation compensation described in Paragraph 38 above.

(3) Default Service Support Rider

44. The Company's tariff will include a Default Service Support ("DSS") Rider that imposes non-bypassable charges to recover the same categories of costs approved by the Commission in the DSP VI proceeding, with consolidation of the Consumer Education Charge component across Rate Districts and elimination of the Midcontinent Independent System and Transmission Expansion Plan cost components, which are zero for all Rate Districts.

45. FE PA's DSS Rider will continue to recover four categories of costs: (1) the uncollectible accounts expense incurred through the provision of default service and on behalf of EGSs through the purchase of receivables ("POR") program for residential and small commercial

customers; (2) retail enhancement costs; (3) customer education costs; and (4) NMB charges.

46. The Joint Petitioners agree that FE PA shall be permitted to file the Default Service Support Rider set forth in FE PA Exhibit CDL-3 to become effective as of June 1, 2027.

(4) Solar Photovoltaic Requirements Charge Rider

47. The Joint Petitioners agree that FE PA shall be permitted to eliminate its non bypassable Solar Photovoltaic Requirements Charge Rider that applies to all distribution customers in the Met-Ed, Penelec, and Penn Power Rate Districts as originally proposed in the DSP VII Petition.

(5) Time-of-Use Rates

48. During DSP VII, the FE PA will continue to offer time-of use (“TOU”) default service rate options for eligible residential and commercial customers under its Commission-approved TOU Default Service Rider (“TOU Rider”) to comply with the Company’s obligations under Act 129 of 2008 (“Act 129”) to offer TOU and real-time rates to all default service customers with smart meters.^[7]

49. The Joint Petitioners agree to the Company’s originally proposed TOU rate structure outlined in Paragraphs 53 to 57 below.

50. After 12 months following implementation of the TOU program under DSP VII, the Company shall conduct an evaluation of customer participation and enrollment in the TOU program. The evaluation shall identify and analyze factors that may be affecting customer enrollment, participation, retention, awareness, understanding of TOU rates, and any barriers to participation reasonably identified by customers or stakeholders. In addition, the evaluation will include comparisons between participating TOU customers

⁷ 66 Pa.C.S. §§ 2807(f)(5). The hourly-priced default service rate for the industrial class already meets Act 129 requirements.

and a group of non-participating customers with similar load profiles for peak load reduction, bill amounts, and a valuation of the peak load reduction to benefits for distribution and default service if implemented on a larger scale. As part of this evaluation, the Company shall reasonably consult available customer data, enrollment trends, customer feedback, outreach results, and any other relevant information available to the Company concerning customer interest in and adoption of the TOU program.

51. Within six months following completion of the first year of the TOU program under DSP VII, the Company shall convene at least one stakeholder meeting open to all interested parties to present and discuss the evaluation findings, customer participation trends, identified barriers to enrollment, and potential modifications or enhancements to improve customer awareness and participation in the TOU program. The Company shall provide the parties to this Settlement with reasonable advance notice of the stakeholder meeting and shall make available, in advance of the meeting, a summary of the evaluation findings and supporting information, subject to appropriate confidentiality protections.

52. If, following the first year of TOU program implementation under DSP VII, the Company's evaluation, stakeholder discussions, and program data demonstrate that the TOU program alone is not producing meaningful or sustained demand reduction, peak load reduction, or customer load-shifting outcomes, the Company shall collaborate with interested stakeholders to develop and evaluate potential alternative or supplemental demand response program options. Any such proposed demand response measures shall be designed, to the extent practicable, to complement and support — and not duplicate, conflict with, or undermine — existing and future programs, objectives, and compliance obligations established pursuant to Act 129. FE PA shall present the results of such evaluation and any resulting proposals in a future filing or stakeholder process, as appropriate. Any associated filings will be at the Company's sole discretion with consideration of input from stakeholders.

**(i) TOU Product Structure
and Rate Design**

53. FE PA's TOU Rider will differentiate prices across three usage periods that are constant throughout the year as shown in Table 1 below.

Table 1

<u>TOU Pricing Period</u>	<u>Year-Round Days/Hours Included</u>
On-Peak	3 p.m. – 7 p.m. Monday through Friday
Super Off-Peak	11 p.m. – 6 a.m. Every day
Off-Peak	All other hours

These TOU pricing periods will be identical for the residential and commercial classes.

54. These TOU pricing periods will be identical for the residential and commercial classes. The Joint Petitioners agree that FE PA will use a single weighted-average class TOU rate multiplier for all Rate Districts during DSP VII. This multiplier will reflect the ratios calculated from average PJM spot market prices as well as allocation of the cost of capacity to on-peak hours only.

55. FE PA agrees to continue reviewing its TOU rate multipliers every two years and to update the TOU multiplier if the calculation results in a 15% or larger change in any direction.

56. FE PA will continue to source both the standard and TOU default service for residential and commercial customers from the same supply portfolio for each procurement class. FE PA will use the standard default service price as calculated in the PTC Rider as the reference price by class for its TOU rate calculations.

57. TOU rates will continue to be adjusted on a semi-annual basis, synchronized with the PTC Rider

adjustment periods for the residential and commercial classes, using FE PA's proposed pricing multipliers. Any mismatches between revenues from TOU rates and supply costs paid to default service suppliers will be recovered or refunded within the existing TOU Rider customer class reconciliation.

(ii) Customer Eligibility

58. FE PA's TOU Rider will be available to residential and commercial default service customers with smart meters. Customers enrolled in the Company's Customer Assistance Program ("PCAP") will not be eligible for the TOU Rider during the DSP VII Term.

59. Participating customers will remain on the TOU Rider until they affirmatively elect to return to FE PA's standard default service rate or switch to an EGS.

60. Customers who select the TOU Rider may leave at any time without incurring related penalties or fees. However, if those customers subsequently leave the TOU Rider for any reason, they may not re-enroll for twelve months.

(iii) Tariff Changes

61. Effective June 1, 2027, the Company shall be permitted to implement the TOU Rider set forth in FE PA Exhibit DMY-6.

(6) Additional Retail Tariff Changes

62. The Joint Petitioners agree that effective June 1, 2027, FE PA shall be permitted to implement the changes to the Company's retail electric service tariff set forth in Exhibit B to this Joint Petition, FE PA Exhibit DMY-6, FE PA Exhibit CDL-2, and FE PA Exhibit CDL-3, including changes to tariff definitions to accommodate the procurement plan set forth in the Settlement and implement the Company's MRPL proposal.

H. Customer Referral Program

63. Under the Commission-approved settlement of the DSP VI proceeding (“DSP VI Settlement”), the Customer Referral Program (“CRP”) administered by FE PA in each of the Rate Districts will terminate on May 31, 2027.

64. The Joint Petitioners agree that FE PA will not implement a successor CRP for DSP VII based on data reviewed during the collaborative held in accordance with the DSP VI Settlement.

I. Supplier Coordination Tariff and Retail Shopping Changes

65. The Joint Petitioners agree to FE PA’s originally proposed modifications to its supplier coordination tariff set forth in FE PA Exhibit CDL-4 in two areas:
(1) protocols for EGS arrangements with customers and
(2) purchase of EGS receivables.

66. As shown in FE PA Exhibit CDL-4, EGSs entering into new contracts with residential customers after June 1, 2027, must return those residential customers to default service at the conclusion of the fixed duration contract term absent an affirmative choice to remain with the EGS in response to the notices required by the Commission’s regulations at 52 Pa. Code § 54.10. In addition, commencing June 1, 2027, EGSs will be required to provide an attestation of affirmative customer consent on a quarterly basis for all residential customers on variable-priced month-to-month products.

67. The Joint Petitioners agree that for all contracts entered into after June 1, 2027, EGSs on utility consolidated billing must use “rate-ready” billing and charge a rate that is at or below the PTC at the time of the customer’s enrollment transaction or rate change transaction to be eligible for purchase of receivables (“POR”) for that customer account. The Company will phase out its existing clawback mechanism over the first year of the DSP VII term if its proposed POR program changes are approved by the Commission.

68. The Joint Petitioners agree that effective June 1, 2027, FE PA shall be permitted to implement the changes to the Company's supplier coordination tariff set forth in FE PA Exhibit CDL-4, including additions to Appendix A to include new PJM billing line items 1935 and 2935 related to DOE emergency orders.

J. Customer Assistance Program Maximum Bill Credits

69. The Company will increase its PCAP subsidy credit limit to the amounts in Table 2 below as of January 1, 2027.

Table 2 Maximum PCAP Subsidy Credit Limits for All Rate Districts		
Federal Poverty Income Guidelines Level	Electric Non-Heating	Electric Heating
0%-50%	\$2,345	\$5,251
51%-100%	\$1,719	\$3,918
101%-150%	\$1,355	\$2,834

70. At its quarterly universal service advisory committee meetings, FE PA will report on the number of customers exceeding their maximum PCAP credit limit.

K. Additional Settlement Terms

71. As a condition of the Settlement, FE PA will include on its website a reference and link to the OSBA's website as a resource for customers.

L. Request for Waivers

72. The Commission's regulations (52 Pa. Code § 54.187) and Policy Statement (52 Pa. Code § 69.1805) provide that default service providers should design procurement classes based upon peak loads of 0-25 kW, 25-500 kW, and 500 kW and greater, but default service providers may propose to depart from these specific ranges, including to "preserve existing customer classes." To the extent necessary, the Joint Petitioners respectfully request that

the Commission grant a waiver of (1) 52 Pa. Code § 54.187(h) – (j) in order to continue to use the residential, commercial, and industrial customer class definitions, which the Commission has previously approved, and to use MRPL to classify net metering customer generators; (2) 52 Pa. Code § 54.187(i) – (j) to continue semi-annual rate adjustments and reconciliation for commercial customers under the PTC Rider and semi annual reconciliation of HP Rider over-and-under collections for the industrial class; and (3) the Commission’s requirements at 52 Pa. Code §§ 54.182 and 54.187 with regard to including certain transmission-related costs in the PTC so that the Company may recover the NMB charges through the non-bypassable DSS Rider rather than the PTC Rider.

73. Under the Commission’s regulations at 52 Pa. Code § 54.10(3), a customer served by an EGS that does not respond to the required notices regarding expiration of a fixed duration contract automatically renews with the customer’s current EGS on a month to-month contract or another fixed duration contract, without cancellation fees. If necessary, the Joint Petitioners respectfully request that the Commission grant a waiver of its regulations at 52 Pa Code. § 54.10(3) to implement FE PA’s changes residential customer arrangements with EGSs described in Section II.I above.

Joint Petition at 6-19, ¶¶ 13-73.

B. Positions of the Parties

1. Discussion of Uncontested Settlement Terms

None of the Parties to this proceeding opposed the following provisions of the Non-Unanimous Settlement: (1) Default Service Procurement and Implementation-Additional Default Service Program Requirements; (2) Rate Design and Cost Recovery Time of Use (TOU) Rates; (3) Customer Assistance Program (CAP)

Maximum Bill Credits; (4) Default Service Support (DSS) Rider; (5) Solar Photovoltaic Requirements Charge (SPVRC) Rider; and (6) OSBA Website Reference.

We agree with the ALJs, as set forth in their Recommended Decision, that these unopposed Settlement provisions are just, reasonable, and in the public interest. R.D. at 96, 153, 233-34, 234-36. Accordingly, we will approve these provisions and related Paragraphs of the Non-Unanimous Settlement.

Specifically, the Settlement adopts FirstEnergy's initial proposal for a four-year DSP term beginning June 1, 2027 and ending May 31, 2031 and for the Company to procure electric generation supply for the residential, commercial and industrial classes through a descending clock auction (DCA). Settlement at ¶¶ 14, 17-18; FirstEnergy Statement in Support at 3-4. As for the procurement plan for the residential class, the Settlement reflects a compromise of the positions of FirstEnergy and the OCA by adopting the OCA's recommended modification to the procurement schedule. OCA Statement in Support at 32. Under the Settlement, DCAs will be held semi-annually, in February and September of each year, with the exception that for the first auction year of the term, FirstEnergy will hold auctions in January 2027, April 2027, and October 2027. Settlement at ¶¶ 24-25, Exh. A; FirstEnergy Statement in Support at 12. Regarding the commercial class, the Settlement adopts the Company's original proposal to procure the commercial-class tranche as a fixed-price, load-following, full requirements product, with either a 12 or 24-month term. Settlement at ¶¶ 23-24; FirstEnergy Statement in Support at 13. For the industrial class, the Settlement adopts FirstEnergy's original proposal to continue to procure hourly-priced full requirements products annually for all default service supply for the industrial class, with one modification to the procurement schedule to conduct auctions in January 2027, February 2028, February 2029, and February 2030. Settlement at ¶¶ 26-27, Exh. A; FirstEnergy Statement in Support at 13. Additionally, Settlement Paragraphs 28 through 35 reflect the Joint Petitioners' agreements on several issues applying to multiple

procurement classes, including AEPS compliance, a supplier master agreement, and related documents to implement the Revised DSP VII, contingency plans, and a third-party evaluator. Settlement at ¶¶ 28-35; FirstEnergy Statement in Support at 14-16.

As addressed in more detail in Section V.A.2, *infra*, RESA opposed the change in responsibility for charges for Network Integration Transmission Service (NITS) under the SMA and the continued use of the CPP. However, none of the Parties to this proceeding contested FirstEnergy's residential, commercial, and industrial class default service products, competitive procurement processes, and implementation plan under the Non-Unanimous Settlement. We agree with the ALJs in the Recommended Decision that the Joint Petitioners have shown that these provisions of the DSP VII satisfy each of the requirements of the Competition Act and the applicable Commission regulations and are reasonably designed to produce default service rates at the least cost over time. R.D. at 96. Therefore, we will approve the default service procurement and implementation plans for each of the classes and the related Paragraphs of the Non-Unanimous Settlement.⁸

Under the TOU rates provision of the Settlement, FirstEnergy will continue its current TOU rates consistent with Commission guidance on TOU rate design and Act 129 requirements with two enhancements: (1) shortening the on-peak pricing period from seven hours (2 p.m. to 9 p.m.) to four hours (3 p.m. to 7 p.m.) to create larger price differentials that are more likely to motivate customers to adjust the time of day they use electricity; and (2) simplifying its TOU rate offerings for the DSP VII by using a single weighted-average class multiplier for all Rate Districts. Settlement ¶¶ 48-61. We agree with the Recommended Decision that the agreed-upon TOU rates under the Settlement satisfy the requirements of Act 129 and incorporate the Commission's recommended

⁸ For additional background information on these uncontested provisions of the Settlement, please refer to pages 86-96 of the Recommended Decision.

guidelines on TOU rate design. R.D. at 153 (citing FirstEnergy Statement in Support at 28).⁹

Regarding the Company's CAP maximum bill credits, under the Settlement, FirstEnergy will increase maximum annual CAP credits for electric heating customers by 60% for each income tier, effective January 1, 2027 and report on credit exceedance levels at its quarterly Universal Service Advisory Committee (USAC) meetings. Settlement at ¶¶ 69-70. With customer affordability in mind, we share the concerns of the ALJs, FirstEnergy, and CAUSE-PA regarding CAP credit exceedance levels and agree with the Recommended Decision in finding this provision to be in the public interest. R.D. at 233-34.¹⁰

The DSS Rider provision of the Settlement, including the requested waiver of Commission regulations, will retain the Commission-approved mechanism for recovering non-bypassable costs associated with default service, including non-market based (NMB) charges, uncollectible accounts expense, retail enhancement costs, and customer education costs. Settlement ¶¶ 44-46, 72. We agree with the Recommended Decision that these provisions are reasonable and in the public interest. R.D. at 235.¹¹

The Settlement term on the SPVRC Rider will result in the elimination of this rider as all legacy solar contracts have expired and the rider is no longer active. Settlement at ¶ 47. Additionally, we note that the Company completed the final reconciliation of the SPVRC Rider at Docket No. P-2025-3054284. FirstEnergy St. 4

⁹ For additional background information on the TOU rates provision of the Settlement, please refer to pages 146-53 of the Recommended Decision.

¹⁰ For additional background information on the CAP maximum bill credits provision of the Settlement, please refer to pages 229-34 of the Recommended Decision.

¹¹ For additional background information on the DSS Rider provision of the Settlement, please refer to pages 234-35 of the Recommended Decision.

at 9. We agree with the Recommended Decision that this Settlement term is reasonable. R.D. at 236.¹²

The Settlement provision for FirstEnergy to include, on its website, a reference and link to the OSBA's website will resolve issues related to customer resources on the Company's website. Settlement at ¶ 71; R.D. at 236. We agree with the Recommended Decision that this term will benefit FirstEnergy's small business customers and is in the public interest. R.D. at 236.¹³

2. Joint Petitioners' Support of the Settlement

Each of the Joint Petitioners individually filed a Statement in Support of the Non-Unanimous Settlement. Each Joint Petitioner submitted that the Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners, that the Settlement is in the best interest of the Company and its customers, that the Settlement is in the public interest, and that the Settlement should be approved, without modification.

This section of this Opinion and Order provides an overview of the Positions of the Joint Petitioners, outlined in their respective Statements in Support, regarding the issues resolved by the Settlement. For a detailed summary of each Party's position on the settled issues, please refer to pages 55-236 of the Recommended Decision.

¹² For additional background information on the SPVRC Rider provision of the Settlement, please refer to pages 235-36 of the Recommended Decision.

¹³ For additional background information on the OSBA website reference provision of the Settlement, please refer to page 236 of the Recommended Decision.

a. FirstEnergy

In its Statement in Support, FirstEnergy submitted that the Non-Unanimous Settlement provides a reasonable means of resolving all issues raised in this proceeding and reduces the administrative burdens on the Commission and the litigation costs of all Parties. Therefore, FirstEnergy asserted that the Settlement is in the public interest and should be approved without modification. FirstEnergy Statement in Support at 35.

FirstEnergy noted that under the Settlement, the Company's DSP VII will have a four-year term, highlighting that a longer program will minimize future litigation expenses and reduce administrative costs. FirstEnergy Statement in Support at 11. FirstEnergy further stated that the Company will procure electric generation supply for the residential, commercial, and industrial classes using a DCA process, which satisfies the Competition Act's requirements regarding competitive procurement processes. FirstEnergy Statement in Support at 11 (citing Settlement at ¶¶ 17-18; FirstEnergy Exh. MP-3), 12. According to FirstEnergy, the Joint Petitioners resolved issues related to the procurement of the 60-month FPFR product for the residential class by agreeing that, as part of the DCA process, the Company's independent evaluator will include consideration of the 60-month product in any pre- or post-auction reports that the evaluator prepares during the normal course of administering auctions. FirstEnergy Statement in Support at 4.

The Company further provided that its default service customers will remain divided into three procurement classes: a residential class, a commercial class, and an industrial class subject to the definitions that were approved in the FirstEnergy DSP VI with a change to the 100 kW threshold that separates the commercial and industrial class groupings. FirstEnergy Statement in Support at 16. FirstEnergy explained that it will assign non-residential default service customers to the PTC Rider or HP Rider based on peak demand or MRPL during its DSP VII, subject to a two-year

exemption period for customer-generators that come online before June 1, 2027.

Id. (citing Settlement at ¶¶ 36-37; FirstEnergy St. 1 (Corrected) at 15-16). According to FirstEnergy, the MRPL provisions of the Settlement appropriately mitigate the escalating rate impacts of net-metering compensation on commercial PTC Rider customers, ensure that default service rates are designed so one customer class does not subsize another, as required by Section 2807(e)(3.9)(7) of the Public Utility Code (Code), and establish reasonable transition protections for affected customer-generators. FirstEnergy Statement in Support at 22.

FirstEnergy noted that under the Settlement, the Company will amortize the cumulative reconciliation balance for the residential PTC Rider identified at the conclusion of each 12-month reconciliation period over the subsequent 12-month period. FirstEnergy Statement in Support at 24 (citing Settlement at ¶ 40, Exh. B). According to the Company, the use of an annual reconciliation schedule will smooth out fluctuations in residential default service prices and result in clearer price signals for both customers and EGSs. FirstEnergy Statement in Support at 24.

Lastly, FirstEnergy highlighted that the Joint Petitioners further agreed to the Company's originally proposed modifications to its Supplier Tariff in two areas. FirstEnergy Statement in Support at 29-31. First, the Company explained that EGSs entering into new contracts with residential customers after June 1, 2027, must return those residential customers to default service at the conclusion of the fixed duration contract term absent an affirmative choice to remain with the EGS in response to the notices required by the Commission's regulations at 52 Pa. Code § 54.10. *Id.* at 5. FirstEnergy further provided that beginning June 1, 2027, EGSs will also be required to provide an attestation of affirmative customer consent on a quarterly basis for all residential customers on variable-priced month-to-month products. *Id.* at 5-6. According to the Company, requiring affirmative action by residential customers to remain with an EGS after the end of a fixed duration contract and customer consent on a quarterly basis

for month-to-month variable rate products will address issues arising from residential customers unknowingly paying prices in excess of the PTC and improve customer choice. *Id.* at 31. Second, FirstEnergy explained for all contracts entered into after June 1, 2027, EGSs on utility consolidated billing must use “rate-ready” billing and charge a rate that is at or below the PTC at the time of the customer’s enrollment transaction or rate change transaction to be eligible for POR for that customer account. *Id.* at 6. The Company reasoned that this Settlement provision is reasonable and allows suppliers to continue using utility consolidated billing (UCB) but places the collection risk on those EGSs that charge rates above the PTC. *Id.* at 33.

b. OCA

In its Statement in Support, the OCA submitted that the Non-Unanimous Settlement is supported by substantial evidence in the record and is in the public interest and the interests of the residential customers of FirstEnergy. OCA Statement in Support at 3, 80. The OCA stated that, as a result of the Settlement, FirstEnergy will meet its statutory obligations to procure a default service portfolio that is designed to ensure service at the least cost over time. The OCA claimed that, when weighed against the risks and costs of litigation, the Settlement is in the public interest. *Id.* at 80. As such, the OCA requested that the Settlement be approved without modification. *Id.* at 3.

Like the Company, the OCA highlighted the resolution of the procurement issues that is achieved by the Settlement. Namely, the OCA argued that the Commission should approve the Company’s continued use of the DCA format, outlined in the Settlement, because such format has consistently demonstrated that it is an efficient, transparent, and competitive means of procuring default service supply and promotes the interests of both the Company and its default service customers. OCA Statement in Support at 18-19.

The OCA noted that although it agreed to the Company's proposed procurement mix of products as part of the Settlement (Paragraph 20), such agreement does not represent a complete endorsement of the Company's original proposal, but rather, was reached as part of a broader negotiated settlement in which the OCA obtained other modifications and protections addressing its concerns. OCA Statement in Support at 30-31. The OCA further noted that while it continues to have concerns regarding the inclusion of 60-month contracts for 10% of the portfolio, Paragraph 21 of the Settlement provides additional protection that helps ease those concerns and make the proposal more acceptable. Specifically, the OCA explained that this Settlement provision ensures that the introduction of the 60-month FPFR product is subject to the same independent oversight and transparency requirements that apply to the Company's existing default service procurements. *Id.* at 31.

Regarding the MRPL Settlement provision, the OCA submitted that FirstEnergy's non-residential customer classification framework should avoid cross-subsidization and risk contamination, which requires keeping higher-risk, more sophisticated larger commercial and industrial customers separate from small commercial customers, so small commercial customer rates remain stable, predictable, and tied to their own load characteristics. OCA Statement in Support at 36 (citing OCA St. 1 at 40). According to the OCA, the MRPL provision of the Settlement properly protects small commercial consumers from unreasonable cross-subsidization and risk contamination. OCA Statement in Support at 36.

The OCA noted its support for FirstEnergy's request for a waiver of 52 Pa. Code Section 54.10(3) to permit the Company to revert customers back to default service, absent affirmative consent at the end of their fixed term contracts because it addresses the OCA's affordability concerns and provides important consumer protections while preserving customer choice, which is in the public interest. OCA Statement in Support at 73. Similarly, the OCA stated its support for the Settlement term requiring

EGSs to provide an attestation of affirmative customer consent on a quarterly basis because it addresses the OCA's affordability concerns caused by EGSs' approach to enroll customers at a price lower than the PTC and to later impose increased variable rates without affirmative consent. *Id.* at 74.

As for the Settlement provision regarding changes to the POR program, the OCA highlighted the testimony of its witness, Ms. Barbara Alexander, that the use of FirstEnergy's bill to collect EGSs charges subject to termination of service is something that the Company should be able to control to benefit its customers, avoid unaffordable bills, and eliminate the Company's responsibility for collecting charges that exceed the PTC. OCA Statement in Support at 76 (citing OCA St. 2 at 13).

c. OSBA

In its Statement in Support, the OSBA noted its agreement with all the Settlement terms and emphasized that its main concern is that all net-metering customer-generators are moved out of the Small Business default service class (PTC Rider) so that it does not negatively impact the non-net-metering customer-generators. OSBA Statement in Support at 1. The OSBA explained that large net-metered customer-generators with minimal or no onsite electric load are currently receiving benefits under the PTC Rider that were not intended for customers of their size or usage, and as a result, the costs associated with those customers are shifted to other default service customers, including small businesses that do not own generation facilities. According to the OSBA, the Settlement addresses this inequity by moving those large customer-generators to the HP Rider, where they will continue to receive fair compensation for the energy they provide without imposing unnecessary costs on small business customers. In addition, the OSBA submitted that the grandfathering provisions of the Settlement are reasonable and honor investment decisions already made by existing customer-generators while establishing an appropriate transition period. Therefore, the

OSBA submitted that the Settlement is a reasonable compromise that fairly compensates customer-generators, promotes equitable cost allocation, and protects Pennsylvania's small businesses from bearing costs that they did not create. *Id.* at 5.

d. CAUSE-PA

In its Statement in Support, CAUSE-PA noted that while it did not sponsor testimony regarding FirstEnergy's default service procurement and implementation plans, classification of non-residential default service customers based on MRPL, PTC Rider, or HP Rider, CAUSE-PA actively monitored these issues throughout the instant proceeding and supports these Settlement provisions as just and reasonable resolutions of the issues in this case. CAUSE-PA Statement in Support at 9-11.

Regarding TOU rates, CAUSE-PA explained that as TOU rates are designed to incentivize customers to shift discretionary usage to off-peak hours, lower-income households are less likely to have discretionary energy usage and more likely to live in smaller, less efficient homes, making it difficult to shift load during peak periods. CAUSE-PA Statement in Support at 11-12 (citing CAUSE-PA St. 1 at 34, 35). CAUSE-PA stated that this Settlement term includes proper consumer safeguards, including the ongoing exclusion of CAP customers from TOU rates, reasonable measurement and reporting provisions, and ongoing stakeholder engagement to evaluate the effectiveness of FirstEnergy's TOU rate. CAUSE-PA Statement in Support at 12 (citing Settlement at ¶¶ 48-49, 50-52). Therefore, CAUSE-PA submitted that the terms of this provision are properly balanced in furtherance of the public interest and should be approved. CAUSE-PA Statement in Support at 13.

Regarding termination of FirstEnergy's CRP, CAUSE-PA explained that there is a clear lack of interest in the program as demonstrated by limited supplier participation and low customer uptake. CAUSE-PA Statement in Support at 13.

According to CAUSE-PA, short-term savings achieved at the outset of the CRP give way to higher prices as hundreds of CRP participants are rolled onto a higher price contract at the end of the CRP term. *Id.* at 16 (citing OCA St. 2 at 6, 7-8, Exh. BA-3). CAUSE-PA submitted that it is firmly in the public interest to allow the CRP to terminate as planned on May 31, 2027, as supported by substantial record evidence. CAUSE-PA Statement in Support at 17.

As for the Settlement provision to return customers to default service at contract expiration unless they affirmatively consent to remain with a supplier, CAUSE-PA stated that such provision will help alleviate the well-documented harm that excessive retail market rates cause residential and low-income customers and therefore, will further the public interest. CAUSE-PA Statement in Support at 21. Regarding the Settlement term for FirstEnergy to purchase the receivables of suppliers participating in utility consolidated billing, CAUSE-PA submitted that such term is appropriately measured and would allow POR to remain available to suppliers that want the substantial benefit of guaranteed collections while simultaneously protecting residential consumers from excessive collections costs. Therefore, CAUSE-PA submitted that this provision will further the public interest. *Id.* at 25.

e. Walmart

In its Statement in Support, Walmart stated that the terms of the Settlement are just and reasonable and that approval of the Settlement is in the public interest. Walmart Statement in Support at 1. Walmart explained that because it intends to develop solar generation projects in FirstEnergy's service territory, the Settlement term providing the Company's commitment not to change certain structural components of the HP Rider for a period of fifteen years provides some stability for prospective customer-generators, like Walmart, to move forward with solar projects. While noting that the MRPL Settlement provision is not perfect, nor without risk to future planned developments,

Walmart submitted that such provision is a reasonable compromise that may encourage solar generation in the Commonwealth. *Id.* at 3.

f. Duquesne

In its Statement in Support, Duquesne highlighted that its customers are experiencing affordability issues for critical electric service. As such, Duquesne submitted that it supported the Non-Unanimous Settlement regarding the affordability initiatives agreed-to therein. Specifically, Duquesne noted its support for the Settlement provision that adopts changes to the supplier tariff that would require EGSs to return residential customers to default service at the conclusion of their fixed duration contracts, unless that customer provides affirmative consent to remain with the EGS. Duquesne Statement in Support at 2. Duquesne explained that given the evidence demonstrating that shopping has resulted in hundreds of millions of dollars of additional costs for ratepayers, this Settlement term is a meaningful affordability provision that will positively impact the retail market in Pennsylvania. Duquesne further noted its support for the Settlement's POR program modifications. Duquesne submitted that this provision of the Settlement will incentivize marketers to improve the affordability of offers in the Pennsylvania retail market and is likely to reduce the number of EGSs offering uncompetitive prices that operate throughout Pennsylvania. *Id.* at 3.

3. Opposition to the Settlement

As discussed in detail in Section V of this Opinion and Order, *infra*, Constellation, CGC, Dimension, the EGS Parties, JSA, Penn Renewables, RESA, and Town Square and WGL filed briefs or letters stating that they objected, in whole or in part, to the Settlement.

C. Recommended Decision

In the Recommended Decision, the ALJs found that FirstEnergy's DSP VII, as modified by the Joint Petition, provides a default service plan which meets the requirements of Section 2807 of the Code, 66 Pa.C.S. § 2807, and the Commission's Regulations at 52 Pa. Code §§ 54.181-54.190. R.D. at 236-37. According to the ALJs, the Non-Unanimous Settlement is in the public interest because under the terms of the Joint Settlement, FirstEnergy will be positioned to obtain an adequate electric generation supply to serve non-shopping customers using an acceptable acquisition and pricing methodology. Accordingly, the ALJs recommended that the Commission grant the Joint Petition and approve the Non-Unanimous Settlement, without modification, and that it approve FirstEnergy's DSP VII, as modified by the Settlement. Additionally, the ALJs recommended approval of Paragraphs 62 (retail electric service tariff) and 68 (supplier coordination tariff) of the Settlement, which permit FirstEnergy to implement the changes to those tariffs consistent with, and on the effective dates provided in, the Settlement. *Id.* at 237.

D. Disposition of Non-Unanimous Settlement

As noted in Section III.C, *supra*, the Commission has articulated its general policy favoring settlements. *See*, 52 Pa. Code § 5.231(a); *see also* 52 Pa. Code §§ 69.401, *et seq.* Additionally, while we do not find it necessary to disfavor or reject a settlement because it is non-unanimous, we also note that there are sound policy reasons to ensure appropriate due process for non-settling parties that do not support the proposed settlement or who wish to continue litigation. The use of a non-unanimous settlement raises the obvious concern that the Commission continue to respect the non-settling parties' right to notice and the opportunity to be heard. Therefore, where a non-unanimous settlement is proposed to resolve litigation, the agency's review of the entire matter should ensure that the evidence and arguments presented by non-settling

parties receive full and fair consideration. *See Pa PUC, et al. v. Peoples Natural Gas Company LLC*, Docket No. R-2023-3044549 (Order entered September 12, 2024). (*Peoples Natural Gas*).

Considerations which may ensure fairness to all the parties include, *inter alia*, independent assessment by the Commission as to whether the non-unanimous settlement is reasonable and in the public interest; fact-finding hearings to determine whether the settlement is in the public interest and supported by substantial evidence; and the range of interests represented in the non-unanimous settlement. The Commission's procedures already provide for many of these safeguards including, *inter alia*: (1) the Commission's independent review and determination regarding whether the settlement is reasonable and in the public interest; (2) the non-settling party's opportunity to object to the settlement; (3) the non-settling party's opportunity to fully litigate contested issues; and (4) the non-settling party's opportunity for fact-finding hearings on the terms of settlement and contested issues. *Peoples Natural Gas*.

We note that a proceeding's procedural history is significant since it reveals whether and how all the parties were afforded due process. Applying this to the instant proceeding, Constellation, CGC, Dimension, the EGS Parties, JSA, Penn Renewables, RESA, and Town Square and WGL, the Parties to this proceeding that opposed the Non-Unanimous Settlement, each had the opportunity to file opposition to the Settlement. Additionally, with regard to the contested issues in this proceeding, discussed in Section V of this Opinion and Order, all Parties have each had the opportunity to file written testimony and briefs setting forth their respective positions on the litigated issues, in addition to having the opportunity to file Exceptions to the ALJs' recommendation thereto. Accordingly, we find that all Parties to this instant proceeding have been afforded the appropriate due process through the full and fair notice and opportunity to be heard.

Upon review, we conclude that the Settlement includes a number of provisions that are in the public interest and warrant approval. Initially, we find that FirstEnergy's proposed Default Service Supply Procurement Plan, for the DSP VII Program Period, pursuant to the Petition, as modified by the terms of the Non-Unanimous Settlement, is in the public interest because it includes and/or addresses all of the elements prescribed by Section 2807 of the Code, the applicable Commission Regulations, and the Commission's policies for Default Service Plans.

FirstEnergy's DSP VII, as modified by the Non-Unanimous Settlement, consists of a prudent mix of default service supply contracts designed to ensure adequate and reliable service at the least cost to customers over time. *See* 66 Pa.C.S. § 2807(e)(3.7). Specifically, FirstEnergy's DSP VII, as modified by the Non-Unanimous Settlement, complies with the requirements of 66 Pa.C.S. § 2807(e)(3.7), as: (1) it includes prudent steps necessary to negotiate favorable generation supply contracts; (2) it includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term, and spot market basis; and (3) neither FirstEnergy nor its affiliated interests have withheld from the market any generation supply in a manner that violates Federal law. AEPS credits are provided for in a competitive fashion, and a contingency plan that addresses any procurement target shortfalls is properly established, in accordance with 66 Pa.C.S. §§ 2807(e)(3.5). *See* Settlement at ¶¶ 30, 31, 33. In addition, FirstEnergy's DSP VII, as modified by the Non-Unanimous Settlement, contains all of the elements required by the Commission's default service regulations (52 Pa. Code §§ 54.181-54.190) and its Policy Statement on Default Service (52 Pa. Code §§ 69.1801-69.1817), including a procurement plan, an implementation plan, contingency plans, a default service rate design plan, and associated tariff pages.

Overall, the Non-Unanimous Settlement reflects a carefully-balanced compromise of the interests of all of the Joint Petitioners on the issues addressed therein. *See* FirstEnergy Statement in Support at 19. Additionally, we find that the terms

contained therein will benefit residential customers, small and medium commercial customers, and large commercial and industrial customers.

Notwithstanding the contested issues, discussed in Section V of this Opinion and Order, the Non-Unanimous Settlement results in savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings and possible appellate court proceedings. In addition to the avoidance of litigation and associated costs, the beneficial aspects of the Non-Unanimous Settlement include: (1) a four-year DSP VII term to minimize future litigation expenses and reduce administrative costs; (2) the classification of default service customers with a peak demand or MRPL of 100kW or above as industrial customers subject to FirstEnergy's HP Rider;¹⁴ (3) the use of the DCA format; (4) the use of a CPP mechanism;¹⁵ (5) the removal of NITS from FPFR contracts;¹⁶ (6) the agreement for FirstEnergy's independent evaluator to administer the DCA process for the 60-month FPFR product consistent with the DCA process for the Company's default service procurements and include the product in its pre- and post-auction reporting; (7) the agreement for FirstEnergy's independent market consultant to evaluate the reasonableness of the 60-month auction; (8) modifications to the procurement schedule establishing a semiannual auction structure and providing a reasonable transition period during the first year of the DSP term; (9) the Company's agreement to pursue 24-month FPFR contracts if 60-month contracts cannot be successfully procured; (10) the Company's agreement to conduct a comprehensive evaluation of the TOU program after its first year of implementation, convene a stakeholder meeting following completion of the evaluation, and consider alternative

¹⁴ As discussed in Section V of this Opinion and Order, we shall approve this proposal.

¹⁵ As discussed in Section V of this Opinion and Order, we shall approve this proposal.

¹⁶ As discussed in Section V of this Opinion and Order, we shall approve this proposal.

approaches if the TOU rate proves ineffective; (11) the requirement for EGSs on utility consolidated billing to use “rate-ready” billing and charge a rate that is at or below the PTC at the time of the customer’s enrollment transaction or rate change transaction to be eligible for POR for that customer account;¹⁷ and (12) the increase to FirstEnergy’s Pennsylvania Customer Assistance Program (PCAP) subsidy credit limits and provision of quarterly reporting on the number of customers exceeding their maximum PCAP credit limit.

While we support the majority of the Settlement terms and find them to be in the public interest, we believe that some of the Settlement terms warrant further review and consideration, as discussed *infra*. Accordingly, we shall grant the Joint Petition and approve the Non-Unanimous Settlement, as modified by this Opinion and Order.

V. Contested Issues

A. Default Service Procurement and Implementation

1. Residential Class Default Service Products

a. Positions of the Parties

FirstEnergy proposed a 100% FPFR product for the residential class with each tranche consisting of a 100% fixed price, load-following full requirements portion with 12-month (45%), 24-month (45%), and 60-month (10%) delivery terms. According to FirstEnergy, reliance upon a full-requirements product contributes to a procurement strategy that is designed to ensure the least cost to customers over time while providing

¹⁷ As discussed in Section V of this Opinion and Order, we shall approve this proposal.

reasonable rate stability, by relying on suppliers' portfolio-management expertise. FirstEnergy St. 3 at 9-11. Under the agreements with PJM, winning suppliers will be responsible for fulfilling all the associated requirements of a LSE, including energy, capacity, transmission, ancillary services, and PJM administrative expenses, as well as providing all necessary alternative energy credits for AEPS compliance. FirstEnergy asserts its residential class procurement product under the Settlement satisfies the requirements of the Choice Act and Commission Regulations concerning default service. FirstEnergy M.B. at 13-15.

The OCA contested FirstEnergy's plan to include 60-month FPFR products for 10% of the default service supply. The OCA opined that the risk premiums for 60-month FPFR products may be high due to the long duration of risks assumed by the wholesale suppliers. Therefore, the OCA recommended using 36-month contracts instead of 60-month contracts. OCA St. 1 at 13, 15-20. As part of the Settlement, the OCA agreed to the Company's mix of 12-month, 24-month, and 60-month default service products. The OCA noted the Settlement provides that the 60-month FPFR product is subject to the same independent oversight and transparency requirements as FirstEnergy's other FPFR products, where the independent evaluator will administer the 60-month auction and include the product in its pre- and post-auction reporting. Further, the OCA commented that the additional requirement for an independent market consultant to evaluate the reasonableness of the 60-month auction results further protects customers by ensuring that the Commission has an independent analysis of whether the resulting 60-month auction prices reflect reasonable market outcomes. According to the OCA, this independent review provides the Commission with an objective assessment of the auction process and results. OCA Statement in Support at 30-31.

CAUSE-PA stated FirstEnergy's default service procurement and implementation plans, as modified by the proposed Settlement, are reasonably designed to provide reliable service and produce default service rates at the least cost over time.

Hence, CAUSE-PA asserted the Company's plan conforms with existing law and policy. CAUSE-PA M.B. at 12.

RESA did not oppose FirstEnergy proposing a 60-month residential procurement product. Rather, RESA questioned whether the procurement product is genuinely a FPFR product due to the Company also proposing to remove market risks via NITS and the CPP. Thus, RESA averred that the Commission should ensure the 60-month procurement product remains a true FPFR product by rejecting the NITS and CPP risk reallocations. RESA M.B. at 12-13.

Constellation supported FirstEnergy's proposal to meet its residential default service load through a portfolio of FPFR contracts with terms of 12, 24, and 60 months. Specifically, Constellation stated that a competitively procured 60-month product falls squarely within the type of long-term procurement mechanism contemplated by Section 2807(e) of the Code, 66 Pa.C.S. § 2807(e). Therefore, Constellation asserted that the Commission should approve the 60-month product, given that the evidentiary record demonstrates that it enhances portfolio diversity, promotes rate stability, and advances the statutory objective of obtaining generation supply at the least cost to customers over time. Constellation M.B. at 6-8.

b. Recommended Decision

The ALJs agreed with the Settling Parties concerning Residential Default Service Products and recommended that the Settlement Paragraphs concerning Residential Default Service Products be approved. Under the Settlement, the ALJs noted that FirstEnergy's residential class procurement product benefits default service customers by protecting the Company and its customers from price and volumetric risk while providing price stability. Additionally, the ALJs found that FirstEnergy relying on full-requirements products and providing reliable service and default service rates at the

least cost over time fulfills the requirements of the Choice Act. Lastly, the ALJs agreed with the OCA that the additional requirement that an independent market monitor evaluate the reasonableness of the 60-month auction results protects customers by giving the Commission an independent analysis of the auction results. R.D. at 59-60.

c. Disposition

No Exceptions were filed objecting to the ALJs' recommendation on this issue. We find the ALJs' recommendation to be reasonable and supported by substantial evidence in the record. Therefore, we shall adopt the ALJs' recommendation to adopt the Settlement concerning Residential Default Service Products, without further comment.

2. Responsibility for PJM Charges (including NITS) Under the Supplier Master Agreement

a. Positions of the Parties

Currently, default service providers have responsibility for PJM charges for NITS, with these charges embedded into prices for FPFR products. FirstEnergy Statement in Support at 9. These charges are currently recovered as part of the cost component in FirstEnergy's PTC (residential and commercial classes) and HP (industrial) Riders. *Id.* (citing FirstEnergy St. 2 at 4-5, 11; FirstEnergy St. 4 at 5-6). The proposal included in the Settlement would, starting on June 1, 2027, remove NITS charges from pricing under the SMA. FirstEnergy would acquire NITS for its default service load and recover the actual NITS component, rather than the cost component, of the PTC and HP Riders. FirstEnergy Statement in Support at 10.

FirstEnergy advocated that the changes to NITS responsibility "eliminates the need for default service suppliers to add premiums into their bids..." and may also

result in increased participation in FirstEnergy's auction, which would benefit default service customers. FirstEnergy M.B. at 16-17 (citing FirstEnergy St. 2-R at 9-10, FirstEnergy St. 4-R at 4-5; OCA St. 1-R at 8-11, OCA St. 1-SR at 18-20). FirstEnergy noted the NITS proposal was consistent with Commission-approved treatment of the charges for other EDCs and consistent with industry practice. FirstEnergy averred that the Settlement ensures default service customers pay actual NITS costs as opposed to estimated costs plus a risk premium. FirstEnergy M.B. at 17.

In response to concerns raised by RESA, FirstEnergy stated that its proposal does not seek to eliminate the risk associated with NITS costs, but to instead ensure default service customers pay actual NITS costs rather than estimated costs plus a risk premium. FirstEnergy M.B. at 17. FirstEnergy argued this change is appropriate given the volatility and different, unhedgable nature of NITS costs. *Id.* at 16-17. According to FirstEnergy, RESA's second argument disregards the volatility of transmission costs since its 2014 NITS proposal in FirstEnergy's *DSP III*. FirstEnergy relied on the Commission's findings in *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of Their Default Service Programs*, Docket No. P-2013-2391368 (Opinion and Order entered February 20, 2015) (*DSP III*) for its position the NITS proposal would not violate the Choice Act, the Code or Commission Regulations, and would be within Commission authority based on the circumstances. FirstEnergy R.B. at 10-11 (citing *DSP III* at 31). FirstEnergy averred that the record evidence established a sufficient change in circumstances, citing both more volatile transmission costs since 2014 and the Commission's treatment of transmission-related costs by other EDCs – as well as broader industry practice. FirstEnergy M.B. at 16-17.

Finally, FirstEnergy argued RESA's contention the NITS proposal creates an economic advantage for EDC-provided default service is erroneous and that the two types of suppliers face different risks. FirstEnergy explained that default service

providers must serve customers under the SMA, while EGSs may offer a variety of retail products and contract structures, including those with different pricing structures and contract durations. FirstEnergy M.B. at 17; FirstEnergy R.B. at 11-12.

The OCA supported the proposal to remove NITS from FPFR contracts “because it shifts NITS cost risk from suppliers to customers while eliminating supplier risk premiums tied to uncertain, unhedgable transmission costs.” OCA M.B. at 9 (citing OCA St. 1 at 24). The OCA stated that customers were “better served” by paying actual NITS and capacity costs instead of estimated costs, because estimated costs are inflated by supplier risk premiums. OCA M.B. at 9 (citing OCA St. 1 at 39; OCA St. 1-SR at 20).

The OCA also pointed to Commission approval of similar procurement structures for other Pennsylvania EDCs and stated that such approval recognizes that removing NITS from FPFR contracts encourages the least cost over time and rate stability. OCA M.B. at 12.

The OCA responded to arguments raised by RESA and noted that RESA misconstrued the argument regarding risk. The OCA reiterated that the proposed changes to NITS costs eliminated the risk premium, not the risk. OCA St. 1-R at 9; OCA R.B. at 7. The OCA countered that RESA also applies the wrong standard because the changes, if approved by the Commission, do not guarantee a price outcome. Rather, the OCA asserted, they approve a redesigned process designed to procure default service competitively over time at least cost. OCA St. 1-R at 8.

The OCA disputed any claims by RESA that removal of the NITS charge meant default service contracts could not constitute a full-requirements contract. Specifically, the OCA echoed FirstEnergy in stating that removal of the NITS charge “does not change the supplier’s obligation to provide enough electricity to meet the customer’s full load requirements.” OCA M.B. at 10; OCA St. 1-R at 4-5.

Finally, the OCA argued that the NITS proposal in the Settlement advanced the statutory goals of providing default service in a way that balances competition, reliability, customer protection, and the provision of service at the least cost to customers over time by preventing customers from paying unnecessary risk premiums. OCA St. 1-R at 4-8; OCA St. 1-SR at 4, 16-20.

RESA opposed the Settlement’s proposal to remove PJM charges for NITS for three reasons: (1) the proposal shifted risk to default service customers, rather than eliminating the risk; (2) the record evidence failed to establish a sufficient basis for such a fundamental change to FirstEnergy’s procurement model; and (3) the proposed changes cause a competitive distortion between default service and competitive supply. RESA M.B. at 16.

In its first contention, RESA relied upon the testimony of its witness, Mr. Frank Lacey, who testified that risk associated with NITS costs does not disappear based on the removal of NITS from procurement costs, but instead the proposal “moves the risk – to the customers who generally have limited ability to evaluate or manage those risks.” RESA M.B. at 18; RESA St. 1-R at 30-31; RESA St. 1 at 39-42. RESA contended that FirstEnergy “has not shown that customers will be better served by assuming the risk themselves rather than continuing to rely on competitive suppliers to forecast, manage, and absorb that risk through fixed-price, full-requirements contracts.” RESA M.B. at 19.

Second, RESA took the position that FirstEnergy’s contention that other Pennsylvania EDCs have removed NITS from their procurement models is irrelevant, especially given FirstEnergy has failed to show the anticipated level of increase in transmission costs or that its existing procurement model has failed. RESA M.B. at 20 (citing RESA St. 1 at 38-42). RESA argued the evidence does not establish that wholesale default service providers are unable to efficiently manage or hedge risk

associated with NITS. RESA M.B. at 20-21. According to RESA, the crucial deficiency in FirstEnergy’s proposal is that FirstEnergy never compared long-term cost of supplier managed risk with customer-borne risk to determine whether the change would benefit customers. RESA M.B. at 21 (citing RESA St. 1 at 39-42; RESA St. 1-R at 30-31).

Third, RESA opined that FirstEnergy’s proposal misconstrued the appropriate avenue for addressing affordability issues. Namely, RESA cited to the Code for the proposition that “competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.” RESA M.B. at 22 (citing 66 Pa.C.S. §2802(12)). RESA stated the FirstEnergy proposal is shortsighted and focuses on “the lowest apparent price in a particular procurement cycle...” rather than the least cost to customers over time. RESA M.B. at 22 (citing 66 Pa.C.S. §2807(e)(3.4)(ii)).

RESA argued that FirstEnergy’s proposal creates an economic advantage for default-service provided by the EDC, as it requires EGSs to continue hedging the risk of NITS costs, leading to higher EGS prices. RESA M.B. at 23 (citing RESA St. 1 at 44). According to RESA, this creates unfairness as “the products no longer allocate wholesale market risk in the same manner...” and moves the default service program “away from the competitive market principles embodied in the Competition Act and Act 129.” RESA M.B. at 24. RESA requested the Commission reject the NITS proposal because FirstEnergy did not demonstrate the proposal advanced affordability through competitive market forces and least-cost procurement over time. RESA M.B. at 25.

b. Recommended Decision

In the Recommended Decision, the ALJs agreed with the Joint Petitioners’ proposal removing PJM charges for NITS from pricing under the SMA and suggested the Commission approve the proposal. The ALJs noted that approval of the NITS bypass proposal was consistent with relevant statutory frameworks and case law and the proposal

properly balanced competitive procurement, reliability, customer protection, and the provision of service at the least cost to customers over time. R.D. at 74.

The ALJs found additional support in the fact that the Commission has accepted this approach in approving similar proposals advanced by other Pennsylvania EDCs. R.D. at 75; *see also* OCA M.B. at 11-12, n.49. In considering prior Commission approval of similar proposals, the ALJs found the Commission had recognized “that removing NITS from FPFR contracts avoids unnecessary costs while promoting rate stability.” R.D. at 75. The ALJs held that “[t]he proposed structure preserves the supplier’s full-requirements obligation while ensuring that transmission costs are recovered through an appropriate and transparent mechanism.” R.D. at 75.

c. Exceptions and Replies

(1) EGS Parties Exception No. 4 and RESA Exception No. 5

In their Exception No. 4, the EGS Parties advance three arguments against the ALJs’ recommended approval of the Settling Parties’ proposal for NITS charges. The EGS Parties argue: (1) removing NITS from default service rates while suppliers continue to bear the cost is unreasonable discrimination pursuant to 66 Pa.C.S. § 1502; (2) the changes artificially deflate the PTC, which is the benchmark of a competitive offer pursuant to the Choice Act; and (3) the record does not support a finding that asymmetry between the PTC and EGS prices is just, reasonable, or consistent with the Choice Act’s purpose. EGS Parties Exc. at 9-11.

The EGS Parties argue that FirstEnergy “has proposed to advantage one class of its own captive distribution customers – those who take default service – over another – those who shop – when both classes impose the same cost on the system” and face the same risk from rising NITS costs. EGS Parties Exc. at 10. The EGS Parties

contend that customers will lose access to competitive offerings “because suppliers will not be able to sustain pricing at a loss against an artificially deflated benchmark...”

Finally, the EGS Parties state the Recommended Decision fails to consider the entirety of the record, especially concerns raised by RESA and the EGS Parties regarding the impact of the pricing impacts of the NITS proposal and resulting harm to the competitive market. The EGS Parties request the Commission sustain their Exceptions, reject the ALJs’ recommendation to approve removal of the NITS charge from default service rates, and adopt the positions advanced by the EGS Parties and RESA. In the alternative, the EGS Parties ask the Commission to remand this proceeding for further hearings on the issues identified in its Exceptions. *Id.* at 11.

In its Exception No. 5, RESA raises three issues with the ALJs’ recommended approval of the NITS proposal. Specifically, RESA argues that: (1) the ALJs conflated a transfer of risk with a reduction in customer cost; (2) the ALJs used the reallocation of risk associated with NITS costs to produce a default service price, rather than allowing the competitive market to produce the price; and (3) the reallocation of risk breaks with the norm of competitive parity and exacerbated other retail restrictions included in the Settlement. RESA Exc. at 33-39.

RESA argues that removing NITS costs from wholesale default service supplier responsibility shifts the risk associated with uncertain future NITS costs to default service customers rather than allowing customers to pay “sophisticated wholesale suppliers to assume and manage the uncertainty.” RESA Exc. at 34. RESA states this risk transfer is not disputed by the parties. *Id.* RESA argues that the ALJs failed to conduct a least cost over time analysis of the proposal, erroneously finding in Conclusion of Law No. 15¹⁸ that the proposed changes to NITS charges did not transfer risk to customers. RESA Exc. at 35.

¹⁸ See R.D. at 240.

RESA contends that “the Competition Act does not direct the Commission to construct the lowest possible apparent PTC” by shifting wholesale risk but requires “competitive procurement designed to obtain least-cost service over time.” RESA Exc. at 36 (citing 66 Pa.C.S. § 2807(e)). RESA states the ALJs failed to establish why transferring the risk produces a least cost over time for customers, rather than just a lower supplier bid. RESA Exc. at 36. According to RESA, this failure “substitutes regulatory judgment about which risks should be reflected in the default-service price for the competitive price formation the Competition Act requires.” RESA Exc. at 37.

Finally, RESA states that changing the classification of NITS costs “changes the relative economics of default and competitive supply.” RESA Exc. at 37. RESA contends that changing the allocation of NITS costs disrupts the relative parity in risk allocation between default service and EGSs, with EGSs required to “forecast, hedge and price that risk into competitive retail offers without a corresponding after-the-fact recovery mechanism.” According to RESA, this change shifts the pricing structure in favor of EDC provided default service. RESA points out the consequences of this “asymmetry” – that if NITS is removed from default service supplier pricing then the PTC and competitive EGS prices no longer reflect the same allocation of risk. Coupled with changes to POR and utilization of the PTC as a benchmark for POR, RESA argues that the ALJs erred by recommending the approval of the changes to NITS allocation. *Id.* at 38.

(2) FirstEnergy and the OCA’s Replies

In its Replies to Exceptions, FirstEnergy insists that its assumption of responsibility for NITS costs will benefit customers. FirstEnergy R. Exc. at 21. FirstEnergy notes that RESA concedes the transfer of unhedgeable NITS costs may reduce default service supplier bid prices. FirstEnergy argues that “[t]he transfer of risk

may reduce overall costs to customers by ensuring that they pay actual costs rather than estimated costs inflated by risk premiums... .” *Id.* at 22.

Second, FirstEnergy contends that RESA and EGS Parties’ arguments in their Exceptions echo arguments the ALJs considered and rejected in the Recommended Decision. Specifically, FirstEnergy states that RESA and the EGS Parties’ argument “erroneously assumes that both types of suppliers face the same risks in managing their wholesale cost obligations and load.” FirstEnergy R. Exc. at 22. FirstEnergy asks the Commission to deny the Exceptions of RESA and the EGS Parties, and to adopt the Recommended Decision without modification. FirstEnergy R. Exc. at 25.

The OCA contends the ALJs properly considered the record evidence in determining that removing NITS costs from the SMA is reasonable and in the best interests of default service customers. OCA R. Exc. at 7. The OCA supports this position by reiterating that removal of NITS costs “avoids requiring suppliers to incorporate an uncertain and difficult-to-hedge cost” into their FPFR bids, which removes an element of supplier risk pricing from the FPFR product and allows customers to pay the actual costs of NITS incurred. OCA R. Exc. at 7. The OCA requests the Commission deny the Exceptions in this matter.

d. Disposition

Upon review of the record and Exceptions in this matter, we shall deny the EGS Parties’ Exception No. 4 and RESA’s Exception No. 5 and adopt the Recommended Decision on this issue, without modification. In doing so, we approve the Settlement’s proposal for the removal of PJM charges for NITS from pricing under the SMA.

As an initial matter, we note the Commission’s finding in *DSP III*, that removing PJM charges for NITS from pricing under the SMA through approval of the

NITS bypass proposal would not violate the Choice Act, the Code, or Commission Regulations. *DSP III* at 38. With this holding in mind, the Commission must consider whether circumstances have changed such that the record evidence supports the removal of NITS charges from the SMA. We find that circumstances have changed necessitating this modification.

As proven by the record in this matter, the risk associated with NITS differs from other wholesale market risks in fundamental ways. While suppliers have vehicles to manage and hedge risks associated with energy, capacity, and load obligations, NITS charges are primarily administratively determined transmission charges outside the control of default suppliers. *See* FirstEnergy St. 2-R at 9-10, St. 4-R at 4-5; OCA St. 1-R at 8-11, OCA St. 1-SR at 18-20. Additionally, default service suppliers must serve customers pursuant to the SMA, whereas EGSs may offer a variety of retail products and contract structures – including those with different pricing approaches and contract durations. FirstEnergy St. 4-R at 7. The previous reasoning behind the inclusion of NITS in FPFR contracts has also changed. Historically, NITS costs were included because transmission costs were stable; however, increased investment in transmission has significantly increased the volatility of these costs. OCA St. 1 at 24.

The Commission's approval of the NITS bypass proposal is consistent with the Customer Choice Act, Act 129, AEPS, the principles of *Coalition for Affordable Utility Services & Energy Efficiency in Pennsylvania v. Pa. PUC*, 120 A.3d 1087, 1101 (Pa. Cmwlth. 2015), *app. denied*, 136 A.3d 982 (Pa. 2016), (*CAUSE-PA 2015*) and Pennsylvania's default service statutory framework. These frameworks do not require the structuring of default service products to guarantee compensation to suppliers for every category of market uncertainty. Instead, the Commission is guided by the requirement of ensuring default service is procured in a matter balancing competitive procurement and markets, reliability, customer protection, and the provision of service at the least cost to customers over time.

We find the NITS bypass proposal included in the Settlement advances the statutory requirements and objectives of default service. It does so by preventing customers from paying the unnecessary risk premiums associated with embedding volatile and difficult to predict transmission costs into fixed-price FPFR products, with the Commission already endorsing this approach in approving similar procurement structures for other Pennsylvania EDCs. OCA M.B. at 11-12, n. 49. This Commission's previous endorsement is an acknowledgement that removing NITS costs from FPFR contracts avoids unnecessary costs and promotes rate stability. *Id.*

In our view, the NITS bypass proposal results in a more cost-effective default service portfolio for customers, leaves EGSs to compete through their own product and offerings, and ensures transmission costs are recovered through an appropriate and transparent mechanism. Therefore, we shall deny the EGS Parties' Exception No. 4 and RESA's Exception No. 5 regarding the NITS bypass proposal and adopt the Recommended Decision on this issue, without modification.

3. Capacity Proxy Price

a. Positions of the Parties

FirstEnergy proposed to continue using a CPP mechanism in its auctions when PJM does not conduct a BRA in time for default service suppliers to incorporate the auction results into their bids. The Company states that the CPP will be equal to the clearing price in the most recent BRA conducted by PJM. FirstEnergy explained that the CPP 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. FirstEnergy M.B. at 17-18.

The OCA ultimately agreed with FirstEnergy that the CPP minimizes customer costs while maintaining stable default service rates. As the OCA explained, suppliers may submit bids using a CPP when PJM capacity prices are unavailable, while a subsequent true-up ensures that suppliers recover only their actual capacity costs. The OCA stated the CPP avoids requiring suppliers to include uncertain capacity costs in their bids, thereby preventing increased customer costs associated with risk premiums, while preserving suppliers' opportunity to secure lower-cost bilateral capacity arrangements. OCA M.B. at 13-14.

CAUSE-PA stated FirstEnergy's default service procurement and implementation plans, as modified by the proposed Settlement, are reasonably designed to provide reliable service and produce default service rates at the least cost over time. Hence, CAUSE-PA asserted the Company's plan conforms with existing law and policy. CAUSE-PA M.B. at 12.

RESA argued that the CPP shifts capacity price risk from wholesale default service suppliers to default service customers while reducing suppliers' long-term hedging obligations. Further, RESA opined that wholesale default service suppliers are better positioned than customers to manage the capacity risk and should remain responsible for doing so, just as competitive retail suppliers remain responsible for managing capacity risk in their retail contracts. RESA declared that, under the Choice Act, FirstEnergy must demonstrate that transferring wholesale market risks from default service suppliers to default service customers, via the CPP, will provide the least-cost service over time. Arguing that the Company failed to do so, RESA asserted that the CPP must be rejected. RESA M.B. at 25-26.

b. Recommended Decision

The ALJs recommended approving FirstEnergy's CPP mechanism. The ALJs found that the CPP promotes competitive procurement, provides transparent cost recovery, and protects default service customers from paying additional risk premiums for uncertain costs that can be reconciled to actual market outcomes, consistent with the Choice Act, Act 129, AEPS, and the principles articulated in *CAUSE-PA 2015*. Specifically, the ALJs noted that the CPP reduces risk premiums that default suppliers price into FPFR products extending into an unpriced capacity period, thereby reducing the costs to default service customers. Finally, the ALJs rejected RESA's arguments against the CPP for the same reasons they rejected RESA's arguments against the Company's NITS proposal, as discussed, *supra*. R.D. at 85.

c. RESA Exception No. 5 and Replies

In its Exception No. 5, RESA argues that the ALJs erred in recommending approval of FirstEnergy's CPP proposal in the Settlement because it transfers wholesale risk and the ALJs' applied inconsistent principles when evaluating the resulting default service price against competitive supply prices. RESA argues that removing the supplier's capacity pricing obligation does not eliminate the underlying risk. Rather, RESA states it changes who bears the capacity risk and how customers pay for it. RESA notes that the ALJs established that the CPP may lower the supplier's bid. However, RESA contends the ALJs did not establish that shifting the underlying capacity-price risk to customers produces least cost to customers over time. Therefore, RESA declares that the CPP does not meet the required statutory standard to ensure the least cost to customers over-time. Accordingly, RESA is of the opinion that the Commission must reject the ALJs recommendations approving the CPP, absent a supported determination that CPP satisfies the statutory least-cost-over-time standard. RESA Exc. at 33-35, 39.

In reply, FirstEnergy states that RESA's argument against the Settlement's CPP proposal is unreasonable because RESA erroneously assumes that both default service suppliers and EGSs face the same risks when managing wholesale costs and load. The Company agrees with the ALJs that the CPP reduces the need for default service 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. FirstEnergy R. Exc. at 21-23.

In its Replies to Exceptions, the OCA states that requiring suppliers to price an unknown future capacity cost into a fixed-price product necessarily requires them to estimate the future market outcome and recover the associated risk through their bids. The OCA asserts that the ALJs correctly recognized that the CPP mechanism reduces unnecessary supplier risk premiums while preserving competitive procurement and ensuring recovery of the actual market-based capacity costs. OCA R. Exc. at 7-8.

d. Disposition

Upon review, we agree with the ALJs that FirstEnergy's CPP proposal in the Settlement is in the public interest because it is supported by the record and is consistent with prior Commission Orders. The Commission has previously approved the use of a CPP in the default service procurements of other EDCs, finding that a CPP and true-up mechanism will maintain diversity of default service supply contracts, while mitigating embedded risk premiums if a portion of a fixed price full requirement would extend into an unpriced capacity period. *See Petition of PECO Energy Company for Approval of Its Default Service Program for the Period From June 1, 2025, through May 31, 2029*, Docket No. P-2024-3046008 (Opinion and Order entered November 7, 2024) (*PECO DSP VI*); *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co., and West Penn Power Co. for Approval to Modify their Supplier Master Agreement*, Docket Nos. P-2020-3021424, *et al.* (Order entered October 13, 2020) at 9;

Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co., and West Penn Power Co. for Approval of their Default Service Plan for the Period from June 1, 2023 through May 31, 2027, Docket Nos. P-2021-3030012, et al. (Final Order entered August 4, 2022); *Petition of Duquesne Light Co. for Approval to Modify its Supplier Master Agreement*, Docket No. P-2020-3023149 (Order entered January 14, 2021) at 4. Here, we agree that allowing FirstEnergy to utilize a CPP will create certainty and improve price stability due to the likelihood that the capacity price will not be known ahead of FirstEnergy's BRAs.

Furthermore, we disagree with RESA's claim that the CPP is anti-competitive. There are differences between the business models and contractual obligations of EGSs and wholesale default service suppliers. Although the CPP will be available only to wholesale default service suppliers, EGSs may offer customers a variety of retail products and contract structures, including products with different pricing approaches and contract durations. For example, while wholesale default service suppliers can only bid on twelve-month, twenty-four-month or sixty-month contracts in FirstEnergy's default service auctions, EGSs can offer products with any term length. *See* FirstEnergy R. Exc. at 22-23. Therefore, we conclude that the CPP proposal will not negatively impact the competitive market.

For these reasons, we find the inclusion of FirstEnergy's CPP proposal to be in the public interest and will approve it. Accordingly, we shall deny this portion of RESA's Exception No. 5.

B. Classification of Non-Residential Default Service Customers

1. Background

Currently, net metering customer-generators with generating capacity of less than three MW and demand below 100 kW are classified as commercial customers

and are assigned to the PTC Rider. Net metering customer-generators have little or no onsite electric load. The amount of generation that exceeds their load is banked until the end of the PJM planning year on May 31, when the banked generation is cashed out at the commercial PTC Rider rate. The costs of the net metering credits and cash outs are recovered from other commercial PTC rider customers. FirstEnergy St. 1-R at 15. FirstEnergy does not use the excess generation from net-metered customer generators as supply to serve default service load, but rather the excess energy is credited to the applicable Rate District at the LMP. FirstEnergy St. 1 (Corrected) at 17.

FirstEnergy proposed changing the classification of non-residential default service customers, effective June 1, 2027, for new and in development net metering projects. Non-residential customers with a demand below 100 kW and MRPL¹⁹ below 100 kW will be classified as commercial customers under the PTC Rider. Non-residential customers with a demand of 100 kW or above or MRPL of 100 kW or above will be classified as industrial customers and will receive hourly-priced default service under the HP Rider. Existing net metering installations online as of the end of DSP VI on May 31, 2027, will be exempt from reclassification until June 1, 2029. FirstEnergy M.B. at 6 (citing Joint Petition, ¶¶ 15-16, 36-37; FirstEnergy St. 1 (Corrected) at 16; FirstEnergy Exh. DMY-6). In addition, excess generation compensation under the HP Rider will include capacity and line losses until May 31, 2041, absent a material change in the PJM capacity markets. FirstEnergy M.B. at 6 (citing Joint Petition, ¶ 38).

¹⁹ The MRPL, as defined in the Commission's Regulations, is the highest level of demand for a particular customer, based on the PJM "Peak Load Contribution Standard," or its equivalent, and as may be further defined by the EDC's tariff in a particular service territory. 52 Pa. Code § 54.182. FirstEnergy proposed the following definition of MRPL: Maximum Registered Peak Load - A customer's net demand contribution impact to the Company's default service procurement activity, as determined upon the net power flow from or into the Company's distribution or transmission system. As related to customer-generators, this shall also be inclusive of the nameplate capacity of the generation system. FirstEnergy Exh. DMY-6 at 1.

2. Classification of Customers Based on Maximum Registered Peak Load

a. Positions of the Parties

FirstEnergy explained that non-residential default service customers will be assigned to the PTC Rider or HP Rider based on peak demand or MRPL during DSP VII, subject to a two-year “grandfathering” period for customer-generators that come online before June 1, 2027. FirstEnergy M.B. at 18-19 (citing Joint Petition, ¶¶ 36-38). FirstEnergy noted that the MRPL proposal agreed to by the Settling Parties will classify customer-generators with larger, more sophisticated customers under FirstEnergy’s HP Rider and mitigate the “true-up” expense generated by large customer-generators that is projected to be between \$60 million to \$544 million by 2029 and would be paid by commercial PTC Rider customers, absent the Settlement. FirstEnergy M.B. at 19 (citing FirstEnergy St. 1-R at 17; FirstEnergy Exh. DMY-7 Revised). FirstEnergy has proposed tariff changes to define MRPL as a customer’s net demand contribution impact to the Company’s default service procurement activity, as determined upon the net power flow from or into the Company’s distribution system. FirstEnergy St. 1 (Corrected) at 16.

Currently, net metering customer-generators with generating capacity of less than three MW and a demand below 100 kw are classified as commercial customers and assigned to the PTC Rider. FirstEnergy M.B. at 19 (citing FirstEnergy St. 1 (Corrected) at 15-16). FirstEnergy provided that net metering customer-generators have little or no onsite electric load, meaning that they consume minimal energy from the grid, but they generate electricity. FirstEnergy M.B. at 19 (citing FirstEnergy St. 1 (Corrected) at 17; FirstEnergy St. 1-R at 16-17). The amount of generation that exceeds consumption is banked until the end of the planning year of PJM on May 31, at which point the banked generation is cashed out at the commercial PTC Rider rate. The costs associated with the net metering credits and cash outs are recovered from the other commercial PTC Rider customers. FirstEnergy St. 1-R at 16. FirstEnergy set forth that these

customer-generators do not bid into the Company's default service auctions, and their excess energy and alternative energy credits are not used to serve default service load or satisfy the AEPS Act requirements. Rather, this excess energy is recognized as an aggregate reduction of the Company's default service load and is credited to the applicable Rate District at the LMP. The PTC Rider rate is significantly higher than wholesale market prices for energy, which creates the true-up expense that represents the difference between the full retail rate and the load reduction credits from PJM valued at the LMP for a given hour. FirstEnergy averred that the MRPL proposal ensures that the costs associated with compensation for excess generation are allocated fairly.

Id. at 16-17.

FirstEnergy argued that the Settlement's MRPL provisions are consistent with recent Commission decisions as well as rulings of the Commonwealth Court of Pennsylvania. FirstEnergy provided that in the recent UGI Utilities, Inc.-Electric Division (UGI) default service proceeding, the Commission approved and the Commonwealth Court affirmed, UGI's classification of customers based on peak demand or peak generation, as FirstEnergy proposed here. FirstEnergy M.B. at 20 (citing FirstEnergy St. 1 (Corrected) at 20; *Petition of UGI Utilities, Inc. - Electric Division for Approval of a Default Service Plan for the Period of June 1, 2025 through May 31, 2029*, Docket No. P-2024-3049343 (Opinion and Order entered February 20, 2025) (*UGI Electric*) at 52-56; *Penn Renewables, LLC v Pa. PUC*, 361 A.3d 652 (Pa. Cmwlth. 2026) (*Penn Renewables*); *see also, Pa. PUC v. Citizens' Electric Co. of Lewisburg*, Docket No. R-2025-3054394 (Opinion and Order entered January 15, 2026) (*Citizens' Electric*) (approving determination of billing demand to include both consumption and production of energy)).

Additionally, FirstEnergy noted that in the settlement of PPL Electric Utilities Corporation's (PPL's) most recent base rate proceeding, the Commission approved a nearly identical definition of MRPL proposed by PPL and incorporated in the

settlement in that proceeding. FirstEnergy M.B. at 20 (citing *Pa. PUC v. PPL Electric Utilities Corporation*, Docket R-2025-3057164 (Opinion and Order entered June 11, 2026) (*PPL Electric*) at 166-87). As FirstEnergy explained, in approving that settlement, the Commission considered and rejected a variety of CGC's arguments against PPL's MRPL proposal, including that PPL's MRPL proposal was inconsistent with the Code and Commission Regulations, not in the public interest, unreasonably discriminatory, and required a cost of service study. FirstEnergy M.B. at 21 (citing *PPL Electric* at 187-202).

According to the OCA, CGC incorrectly asserted that the MRPL establishes customer classifications solely based on a customer's demand level (*i.e.*, whether demand is above or below 100 kW) for purposes of determining the applicable default service rate. OCA R.B. at 17 (citing CGC M.B. at 15-16). The OCA explained that FirstEnergy's definition of MRPL also includes a customer's impact on the Company's procurement requirement. OCA R.B. at 17 (citing FirstEnergy Exh. DMY-6 at 1).

The OCA noted the Commission's regulation at 52 Pa. Code § 54.182 defining MRPL allows further definition through the applicable EDC tariff. The OCA set forth that large customer-generators may warrant treatment like industrial customers where their procurement characteristics, load impacts, and associated risks are comparable. OCA M.B. at 17.

The OSBA's witness, Mr. Maksim Malukoff, agreed with the Company's MRPL proposal, noting that small business default service customers are subsidizing customer-generators. Mr. Malukoff stated that reclassifying large customer-generators under the HP Rider would provide these customers with fair compensation without burdening small businesses that are not customer-generators. OSBA St. 1 at 9-10.

CAUSE-PA provided that it actively monitored and reviewed the MRPL proposals in this proceeding and believes the provisions in the proposed Settlement are in the public interest and are supported by substantial evidence. CAUSE-PA M.B. at 13.

CGC contended that FirstEnergy's MRPL proposal illegally seeks to equate demand with supply. According to CGC, FirstEnergy's MRPL definition is not in compliance with the Commission's Regulations which clearly define Maximum Registered Peak Load. CGC Main Brief at 16-17.

CGC averred that FirstEnergy's projections for customer-generator growth are inaccurate. CGC argued that FirstEnergy's queue of approximately 1,555 net-metering applications is not a reasonable benchmark for predicting project energization. CGC provided that only 18% of the projects in the queue have progressed to or beyond agreeing to pay for a Study Agreement that funds FirstEnergy's feasibility study. CGC M.B. at 18 (citing CGC St. 1-SR at 2; CGC Exh. JAH-2SR). In addition, less than 15% of prospective net-metering customers have a Construction Services Agreement. CGC M.B. at 18-19 (citing CGC St. 1-SR at 7-8; CGC Exh. JAH-2SR). CGC maintained that FirstEnergy's growth projections are "overstated and not premised on reliable data." CGC M.B. at 20.

CGC averred that the MRPL proposal removes much of the incentive structure now present for existing and prospective customer-generators. In CGC's view, the MRPL would undercut the benefits provided by existing customer generators that brought net-metering facilities to FirstEnergy territory utilizing the existing PTC Rider. According to CGC, projects were identified, financed, and constructed with the understanding that the PTC Rider would be the applicable classification, but under the MRPL proposal, they likely will not be viable. CGC M.B. at 20 (citing CGC St. 1 at 5).

JSA averred that if FirstEnergy's MRPL proposal is approved by the Commission, operational and near-operational customer-generators will be harmed. JSA M.B. at 14 (citing CGC St. 1 at 18). JSA noted that projects that will be impacted by the MRPL have already incurred significant upfront capital costs and are relying on the status quo. JSA M.B. at 14-15 (citing JSA St. 1 at 67). JSA explained that after the reclassification, the excess generation from customer-generators subject to the change will no longer be compensated under the PTC Rider and will receive less compensation under the HP Rider. JSA M.B. at 15 (citing Tr. at 101-03). According to JSA, the only equitable solution is to provide the mature stage customer-generators an "appropriate legacy status." JSA M.B. at 15.

JSA contended that FirstEnergy's growth projections for customer-generators are unreliable and unsupported by evidence. JSA M.B. at 17. In this regard, JSA provided that both JSA's witness, Mr. Thomas Michelman, and CGC's witness, Mr. Heidell, testified that the Company's witness, Mr. Young's, estimates of potential growth of net-metered customer generators coming online by 2029 are overstated. JSA reasoned that there is no guarantee that customers that have signed interconnection agreements or Construction Service Agreements will reach commercial operation. JSA M.B. at 16 (citing CGC St. 1 at 8). JSA highlighted the explanation of its witness, Mr. Michelman, that the projects in Mr. Young's estimates are in the early stages of development and face additional hurdles such as financing, supply chain issues, permitting issues, siting issues, and market changes. JSA R.B. at 10 (citing JSA St. 1-S at 16-17).

Dimension stated that certain customer-generator projects would be reassigned to the large commercial and industrial rate HP schedule, instead of the previously applicable PTC schedule. Dimension explained that under the HP schedule, exported generation is compensated at a lower rate. Dimension M.B. at 6.

b. Recommended Decision

The ALJs noted that the Commission’s MRPL definition includes the following language: “and as may be defined in the EDC’s tariff in a particular service territory.” The ALJs noted that the Joint Petitioners have accepted FirstEnergy’s tariff change, as FirstEnergy proposes to define MRPL as “a customer’s net demand contribution impact to the Company’s default service procurement activity, as determined upon the new power flow from or into the Company’s distribution system.” R.D. at 112 (citing 52 Pa. Code § 54.182; Settlement ¶ 36; FirstEnergy St. 1 (Corrected) at 16; FirstEnergy Exh. DMY-6).

The ALJs reasoned that the Settlement’s MRPL provisions are consistent with a series of recent Commission decisions as well as the rulings of the Commonwealth Court. The ALJs highlighted that the Commission approved UGI’s classification of customers based on peak demand or peak generation in UGI’s most recent default service proceeding and that the Commission’s decision was affirmed by Commonwealth Court. R.D. at 112 (citing FirstEnergy St. 1 (Corrected) at 20; *UGI Electric* at 52-56). The ALJs further cited the Commission’s recent decision in *Citizens’ Electric* (approving determination of billing demand to include both consumption and production of energy). R.D. at 112. Additionally, the ALJs noted that in the settlement of PPL’s most recent base rate case, the Commission approved a nearly identical definition of MRPL which was incorporated in the settlement in that proceeding. R.D. at 112 (citing *PPL Electric* at 166-87). In that proceeding, the ALJs explained that the Commission considered and rejected several arguments by CGC against PPL’s MRPL proposal, including that PPL’s MRPL was inconsistent with the Code and Commission Regulations, not in the public interest, unreasonably discriminatory, and required a cost of service study. R.D. at 112-13 (citing *PPL Electric* at 187-202; FirstEnergy M.B. at 20-21).

The ALJs noted that CGC objected to FirstEnergy's MRPL proposal, alleging that a DSP proceeding is not the appropriate venue to address this definition. R.D. at 113 (citing CGC M.B. at 40). The ALJs provided that the *Penn Renewables* case affirmed the Commission's approval of UGI's DSP. R.D. at 113. UGI's plan in that case established the Supply Peak Load Impact (SPLI) design, which utilized MRPL concepts to reclassify certain large, net-metered customer-generators into hourly locational marginal pricing classes. *Id.* (citing OCA St. 1-R at 23). The ALJs opined that the Commonwealth Court's affirmation created a 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. at 113 (citing *Penn Renewables* at 11-12; OCA R.B. at 18-19).

According to the ALJs, CGC incorrectly alleged that MRPL establishes customer classifications solely based on a customer's demand level (*i.e.*, whether demand is above or below 100 kW) for purposes of determining the applicable default service rate. R.D. at 113 (citing CGC M.B. at 15-16). The ALJs explained that FirstEnergy's definition of MRPL also includes a customer's impact on the Company's procurement requirements. R.D. at 113 (citing FirstEnergy Exh. DMY-6 at 1). The ALJs explained further that MRPL is intended to capture a customer's broader impact on default service procurement, including the effects of customer generation. R.D. at 113 (citing FirstEnergy St. 4 at 16; OCA St. 1-R at 15-17; OCA R.B. at 17-18).

The ALJs cited to Section 54.187 of the Commission's Regulations, 52 Pa. Code § 54.187, and Policy Statement at 52 Pa. Code § 69.1805 to note that default service providers should design procurement classes based upon peak loads of 0-25 kW, 25-500 kW, and 500 kW and greater, but default service providers may propose to depart from these specific ranges, including to "preserve existing customer classes." R.D. at 114 (citing 52 Pa. Code § 69.1805).

The ALJs noted that the MRPL proposal will classify customer-generators with larger, more sophisticated customers under FirstEnergy's HP Rider and mitigate the true-up expense generated by large customer-generators that is projected to be between \$60 million to \$544 million by 2029 and paid by commercial PTC Rider customers, absent the Settlement. R.D. at 114 (citing FirstEnergy St. 1-R at 17; FirstEnergy Exh. DMY-7 Revised). The ALJs further noted that inclusion of large customer-generators in the commercial customer procurement group would bundle small commercial customers with more sophisticated large customer-generators in the same FPFR contract procurements. R.D. at 114 (citing OCA St. 1 at 38; OCA Statement in Support at 35).

The ALJs opined that the evidence in this proceeding established that continued inclusion of large customer-generators in the PTC Rider commercial class would result in risk premiums in default service costs that would adversely affect small commercial customers already burdened by the increasing true-up expense of customer-generator compensation. R.D. at 114 (citing FirstEnergy M.B. at 21).

The ALJs agreed with the arguments set forth by FirstEnergy and the OCA in favor of the MRPL proposal and recommended approval of the MRPL proposal contained in the Settlement. R.D. at 114.

c. CGC Exception Nos. 1 and 2 and JSA Exception Nos. 3 and 4

(1) CGC Exception No. 1

In CGC's Exception No. 1, CGC avers that the ALJs erred in concluding that the MRPL proposal is supported by substantial evidence. According to CGC, the ALJs focused on three unproven allegations to support the MRPL proposal: (1) that customer-generation adds risk premiums into wholesale supplier bids; (2) growth of

customer generation will increase the true-up expenses of the PTC Rider customers; and (3) that large customer-generators shop for competitive supply and increase the volume risk for wholesale suppliers. CGC Exc. at 6-7 (citing R.D. at 96-114).

CGC alleges that substantial evidence was not provided to support the justifications for the MRPL. CGC Exc. at 7. CGC argues that the ALJs relied on earlier Commission and Commonwealth Court decisions that are inconsistent with the applicable law and do not prove that FirstEnergy provided substantial evidence here. CGC Exc. at 8-9 (citing R.D. at 112-13; *UGI Electric*; *Citizens' Electric*, *PPL Electric*). CGC states that FirstEnergy admitted it did not and cannot quantify the alleged risk premiums and cannot predict changes to the PTC. CGC Exc. at 9 (citing CGC St. 1 at 8, 10; CGC Exh. JAH-5). CGC provides that the queue is not a good benchmark to predict energization as not a single project submitted in 2025 has made significant progress towards energization. CGC submits that even the 10% FirstEnergy proposes as the low end of energization rate, is higher than the historical rate. CGC Exc. at 11. Finally, CGC argues that large customer-generators do not shop for competitive supply and EGSs do not pay customer-generators for excess generation. CGC Exc. at 12.

(2) CGC Exception No. 2

In CGC's Exception No. 2, CGC alleges that the ALJs ignore the benefits provided by customer-generators such as: (1) customer-generators reduce FirstEnergy's capacity obligations; (2) customer-generators reduce system losses, transmission costs and the market price for electricity; (3) customer-generators provide health benefits; and (4) customer-generators support investment in FirstEnergy's distribution system. CGC Exc. at 13-19 (citing R.D. at 114). CGC also argues that the MRPL will discourage new generation, which is not in the public interest. CGC adds that the MRPL will also reduce incentives to develop distributed energy resources. CGC Exc. at 13-19.

(3) JSA Exception No. 3

In JSA's Exception No. 3, JSA contends that the ALJs did not fully address the issue of negative Peak Load Contributions (PLCs). JSA states that the Recommended Decision includes three Findings of Fact regarding the issue but does not include an analysis or discussion to support the Findings of Fact. JSA Exc. at 12-13 (citing R.D. at 21-22; FOFs 51, 52, and 55). According to JSA, the ALJs erred as a matter of law by failing to adjudicate a central issue in the proceeding. JSA requests that the Commission direct FirstEnergy to measure negative PLCs and negative Network Service Peak Loads (NSPLs) of individual customer-generators and, in the alternative, that the Commission initiate a statewide proceeding to consider measuring negative PLCs and NSPLs by all electric utilities in Pennsylvania. JSA Exc. at 13.

(4) JSA Exception No. 4

In JSA's Exception No. 4, JSA maintains that the ALJs failed to consider the resource adequacy benefits of customer-generators, as the ALJs made no mention of the benefits customer-generators provide to FirstEnergy and PJM. JSA provides that net-metered generation provides additional supply and preserves resource adequacy in the FirstEnergy and PJM territories. JSA Exc. at 13. JSA argues that FirstEnergy should not be disincentivizing new or operational distributed generation when Pennsylvania is faced with increasing load from data centers and the electrification of transportation. *Id.* at 14 (citing CGC St. 1 at 5).

(5) Replies to CGC Exception No. 1 and 2 and JSA Exception Nos. 3 and 4

In FirstEnergy's Replies to CGC Exception Nos. 1 and 2 and JSA Exception Nos. 3 and 4, FirstEnergy provides that in its initial DSP VII filing,

FirstEnergy proposed an expanded 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 FirstEnergy's commercial HP Rider instead of the PTC Rider. FirstEnergy explains that the ALJs found this further definition and classification agreed to by the Settling Parties will properly classify net metering customer-generators with larger, more sophisticated customers under FirstEnergy's HP Rider and mitigate the true-up expense generated by large customer-generators. FirstEnergy projected this expense to range between \$60 million to \$544 million by 2029, that commercial PTC Rider customers would pay absent the Settlement. FirstEnergy R. Exc. at 4-5 (citing R.D. at 18-20; FOF Nos. 37-40, 44).

While CGC argued that FirstEnergy's net metering queue with approximately 1,555 applications was a "misleading benchmark," FirstEnergy contends that its sensitivity analysis demonstrated that if only 10% of customer-generator projects came online by 2029, this would lead to a net metering expense for default service small business customers of \$59 million. FirstEnergy R. Exc. at 5 (citing CGC Exc. at 10-11; FirstEnergy M.B. at 23). FirstEnergy notes that CGC acknowledges that 18% of the approximately 1,555 projects in the queue have agreed to pay for a study agreement, 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 cancelled. FirstEnergy R. Exc. at 5-6 (citing R.D. at 20, FOF Nos. 45-47; CGC Exc. at 11). FirstEnergy maintains that these statistics support the assertion that the 10% energization calculation and associated increases in the PTC to compensate customer-generators provides more than sufficient justification for the MRPL Settlement provisions. FirstEnergy R. Exc. at 6.

FirstEnergy disagrees with CGC's arguments that there is a lack of evidence to support increased wholesale default service risk premiums from customer-generators. FirstEnergy notes that the OCA's witness, Dr. Ogur, provided

several reasons why those premiums exist, including how fluctuating net-metered customer generation can give rise to uncertain capacity costs to serve default service load. According to FirstEnergy, the ALJs did not simply rely on the Commission's decision in *UGI Electric*, as CGC argues. FirstEnergy R. Exc. at 6 (citing R.D. at 21, 101-02, 114, FOF No. 50).

FirstEnergy notes that both CGC and JSA argue that the ALJs ignored the benefits of customer generators. FirstEnergy R. Exc. at 7 (citing CGC Exc. at 14; JSA Exc. at 13-14). FirstEnergy provides that the ALJs found that FirstEnergy does not use excess energy from net-metered customers as supply to serve default service load. FirstEnergy R. Exc. at 6-7 (citing R.D. at 19, FOF No. 41; FirstEnergy St. 6-R at 3-4). Additionally, FirstEnergy argues that CGC is unable to quantify the benefits customer-generators will deliver or explain why small commercial customers should pay for these purported benefits. FirstEnergy R. Exc. at 7 (citing CGC Exc. at 13-19; FirstEnergy M.B. at 30-31; FirstEnergy R.B. at 22-24). While both CGC and JSA aver that the ALJs did not consider how customer-generators can assist with resource adequacy, FirstEnergy points to the testimony of its witness, Mr. Hussing, that customer-generators are not dispatchable PJM capacity resources and do not directly reduce PJM's forward capacity requirements. FirstEnergy R. Exc. at 7 (citing R.D. at 21, 132, FOF No. 56).

FirstEnergy asserts that the ALJs properly recommended the rejection of JSA's proposal that FirstEnergy include negative PLCs and NSPLs. FirstEnergy notes Mr. Hussing's explanation that PLCs are accounting constructs and assigning a negative PLC to a customer-generator will result in a higher allocation of costs to other customers. FirstEnergy R. Exc. at 10 (citing FirstEnergy St. 6-R at 5, 8). The Company also noted Mr. Hussing's assertion that the asserted forward capacity and transmission benefits that JSA relied upon were uncertain, as those benefits assumed future generation at periods of PJM coincident peak load. FirstEnergy R. Exc. at 11 (citing FirstEnergy St. 6-R at 5;

FirstEnergy St. 6-RJ at 2-3). According to FirstEnergy, the ALJs made factual findings consistent with Mr. Hussing's testimony and did not recommend modification of the Settlement to incorporate JSA's request or adopt JSA's proposal for a statewide proceeding to address PLCs. FirstEnergy R. Exc. at 11 (citing R.D. at 21, FOF Nos. 51-52).

FirstEnergy disagrees with JSA's argument that the ALJs "failed to adjudicate" the PLC issue. FirstEnergy provides that the recommended decisions of ALJs 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." FirstEnergy R. Exc. at 11 (citing *Consol. Rail Corp v. Pa. PUC.*, 625 A.2d 741, 744 (Pa. Cmwlth. 1993)). FirstEnergy sets forth that the ALJs here reviewed the testimony of each party, considered JSA's arguments, and made specific factual findings that negative PLCs were based upon uncertain benefits and should not be adopted. FirstEnergy R. Exc. at 11. FirstEnergy suggests that rather than making a late request for a statewide proceeding to address negative PLCs here, JSA could file a separate petition for a proceeding where other parties with interests relating to capacity and transmission costs would have an opportunity to intervene or address JSA's proposal. *Id.*

In Reply to CGC Exception Nos. 1 and 2, the OCA explains that the record supports the ALJs' finding that increasing numbers of large customer-generators creates procurement uncertainty because their load and generation are variable and their ability to switch between default service and competitive supply affects suppliers' risk. OCA R. Exc. at 10 (citing R.D. at 22; OCA St. 1-SR at 30-31). The OCA explains further that assuming only 10% of the queued customer-generator projects reach commercial operation, net-metering expenses could exceed \$59 million by 2029. OCA R. Exc. at 10 (citing R.D. at 21). Additionally, the OCA contends that the ALJs relied on substantial evidence that large customer-generators have little or no load and can impose material true-up costs on other PTC customers. OCA R. Exc. at 10 (citing

R.D. at 20-22). While CGC argues that the ALJs did not balance the benefits with the costs of customer-generators, the OCA provides that these benefits do not reduce FirstEnergy's default-service procurement costs. OCA R. Exc. at 12 (citing R.D. at 114-115).

In Reply to JSA Exception Nos. 3 and 4, the OCA provides that the ALJs considered the PLC and NSPL issue and made specific findings that these are accounting constructs, would change the allocation of costs among FirstEnergy customers, and JSA's projected savings are uncertain. OCA R. Exc. at 9 (citing R.D. at 21-22). Regarding resource adequacy, the OCA argues that this issue is not the relevant issue in this proceeding. Rather, the OCA asserts, the relevant issue is whether large customer-generators should continue to be grouped with small commercial customers for default-service procurement. OCA R. Exc. at 9 (citing OCA R.B, at 28-29; OCA M.B. at 24).

d. Disposition of CGC Exception Nos. 1 and 2 and JSA Exception Nos. 3 and 4

We disagree with CGC's argument that the ALJs' based their decision regarding the MRPL proposal on less than substantial evidence. As noted above, CGC contends that the ALJs' based their decision on three unproven allegations: (1) customer-generation results in risk premiums included in wholesale supplier bids; (2) customer-generator growth will increase "true-up" expenses for PTC Rider customers; and (3) large net-metering customers have a propensity to shop for competitive supply, increasing volumetric risk for wholesale suppliers. CGC Exc. at 6-7. The ALJs relied on evidence in the record regarding each of these issues. The ALJs cited to the risk premium evidence provided by FirstEnergy's witness, Dr. Nicholas E. Powers and the OCA's witness, Dr. Ogur. Both witnesses noted that customer-generators cause risk premiums for suppliers due to uncertainty in such items as load variability, customer

behavior, and fluctuating generation. R.D. at 114 (citing FirstEnergy M.B. at 21; FirstEnergy St. 3-R at 8; OCA St. 1 at 38-40). As FirstEnergy stated, the Commission does not require specific quantification of risk premiums to determine that they exist. FirstEnergy M.B. at 26 (citing 66 Pa.C.S. § 2807(e)(3.3); *UGI Electric* at 56). We note that FirstEnergy’s witness, Mr. Young, testified that assigning no load customer-generators with MRPL greater than 100 kW to the HP Rider will mitigate the risk premiums. FirstEnergy St. 1-R at 17. The ALJs noted that customer-generator growth is expected to increase the PTC true-up expense between \$60 and \$544 million by 2029. R.D. at 114 (citing OCA St. 1 at 38; OCA Statement in Support at 35). This estimate is based on FirstEnergy’s range of expected growth of customer generators from 10% to 50% energization. FirstEnergy M.B. at 22; FirstEnergy St. 1-R at 21-22, FirstEnergy Exh. DMY-7 (Revised). The use of this range of data by the ALJs is reasonable and supports their determination.

The ALJs did not base their findings regarding the MRPL on the issue of whether large net-metering customers shop for competitive supply but, rather, they stated that “continued inclusion of large customer-generators in the PTC Rider commercial class would result in risk premiums in default service costs that would adversely affect small commercial customers....” R.D. at 114 (citing FirstEnergy M.B. at 21). FirstEnergy’s witness, Dr. Powers, stated that “[s]upplier risk premiums reflect multiple sources of uncertainty, including load variability, market conditions, and customer behavior, and are incorporated into a single bid price.” FirstEnergy St. 3-R at 8. The issue of whether net-metering customers shop for competitive supply is insignificant in evaluating the MRPL proposal. Therefore, we shall deny CGC Exception No. 1.

Next, we note that the ALJs are not required to provide a cost-benefit analysis of the purported benefits that CGC detailed in their Exception No. 2, including resource adequacy, reduction of costs, health protections, and other benefits. As the OCA provided, the general benefits of distributed generation do not reduce FirstEnergy’s

default service procurement costs. *See* OCA R. Exc. at 12. Additionally, we agree with the OCA that these benefits are addressed more appropriately through public policy tools, including tax incentives and market-based credit mechanisms, rather than through utility ratemaking mechanisms within a default service proceeding. *See* OCA M.B. at 24. We note that CGC did not explain why small businesses in Pennsylvania should pay for the costs of providing any of these purported benefits, and it is not reasonable for small businesses to do so. These purported benefits do not support the continuation of large customer-generators on the PTC Rider.

Both CGC and JSA contend that customer-generators provide benefits with regard to resource adequacy. We agree with the OCA that the relevant issue in this proceeding is not whether distributed generation may provide additional resource adequacy, but whether large customer-generators should continue to be grouped with small commercial customers for default service procurement when they impose different procurement risks and costs. OCA R.B. at 28-29; OCA M.B. at 24. The ALJs were correct in finding that large customer-generators increase costs for small commercial customers through the PTC Rider and to continue the cost subsidy would be unreasonable. R.D. at 137. The true-up cost as of May 31, 2025, for the commercial PTC Rider class is \$4.6 million and is estimated to increase to between \$60 and \$544 million by 2029. FirstEnergy St. 1-R at 17. The PTC Rider customers will bear these costs absent the Settlement. FirstEnergy St. 1-R at 16. The FPFR products include risk premiums due to the presence of customer-generators increasing PTC costs for default customers. FirstEnergy St. 1-R at 17. Based on the evidence, we conclude that large customer-generators should no longer be grouped with small commercial customers. Accordingly, CGC Exception No. 2 and JSA Exception No. 4 are denied.

Despite JSA's argument that the ALJs did not consider negative PLCs and NSPLs, we find that the ALJs reviewed the negative PLCs and NSPLs issue and determined that these items are accounting constructs and will result in different

allocations of costs between FirstEnergy customers, including between FirstEnergy customers in other default service classes. Additionally, the projected capacity and transmission cost savings JSA relied upon assumed generation during PJM coincident peaks without certainty that this would occur. FirstEnergy St. 6-R at 5-7; JSA St. 1 at 21. We agree with the ALJs' Finding of Fact Nos. 51-55. We also note that negative PLCs would not reduce the capacity requirements or costs assigned by PJM to FirstEnergy's zone, could result in higher costs for other customers, and could disrupt fixed-price commitments already in place with suppliers. OCA St. 1-SR at 33, 35. Therefore, we shall deny JSA Exception No. 3.

e. CGC Exception No. 3

In its Exception No. 3, CGC argues that while the ALJs recited the correct standard for approval of the MRPL provision, in effect, the ALJs' analysis "treats the existence of compromise between a small minority of parties" as sufficient to approve such provision. According to CGC, such analysis is inconsistent with the legal standard to be used when evaluating the Non-Unanimous Settlement. CGC Exc. at 19-20. Specifically, CGC contends that the Recommended Decision does not determine whether the MRPL provision satisfies the governing regulatory definition, whether the evidentiary record has been sufficiently developed to support the proposed rate treatment, or whether the MRPL rate reclassification is non-discriminatory. *Id.* at 20. Instead, CGC argues that the Recommended Decision leans heavily on the Commission's treatment of *UGI Electric* and *PPL Electric's* comparable proposals. CGC notes that while those proposals are similar to FirstEnergy's, they were developed and approved under an entirely different evidentiary record involving different utilities, service territories, and customers. Therefore, CGC submits that the factual and legal conclusions in this proceeding should naturally vary from those reached in *UGI Electric* and *PPL Electric* and that the existence of a Non-Unanimous Settlement should not supplant the

Commission's mandate to evaluate each individual case under the governing legal standards. CGC Exc. at 20.

f. Replies to CGC Exception No. 3

In its Replies to CGC's Exception Nos. 3-6, FirstEnergy argues that the ALJs applied the correct legal standard for reviewing non-unanimous settlements. FirstEnergy clarifies that the ALJs did not simply cite to earlier decisions but rather concluded that the Settlement is consistent with those decisions after analyzing the Settlement, making numerous detailed findings of fact regarding cost projections and grandfathering based on record evidence, and carefully reviewing the arguments of the Parties. FirstEnergy R. Exc. at 8.

In its Replies to CGC's Exception No. 3, the OCA argues that the ALJs applied the proper legal standard for approval of non-unanimous settlements, as they noted that the Commission applies the same standards for non-unanimous as it does for unanimous settlements and that settlements must be reasonable and in the public interest. OCA R. Exc. at 24. Regarding MRPL, the OCA asserts that the ALJs further noted that the *Penn Renewables* case affirmed the Commission's approval of UGI's DSP, which established the SPLI design that utilizes MRPL. *Id.* at 24-25. In addition, the OCA contends that the Recommended Decision contains a full and complete analysis section that discusses MRPL and CGC's same arguments, specifically and at length. Therefore, the OCA submits that CGC's Exception No. 3 should be denied. *Id.* at 25.

g. Disposition of CGC's Exception No. 3

In its Exceptions, CGC largely repeats arguments that the ALJs considered and rejected: that the MRPL provisions of the Settlement are inconsistent with the Commission's Regulations, the AEPS Act, and Act 129, are not in the public interest,

lack substantial evidence, were not adequately analyzed, and were approved under the wrong standard for a non-unanimous settlement. Upon review, we find that the ALJs applied the proper standard, reviewed the MRPL record in detail, and correctly concluded that FirstEnergy's MRPL proposal, as modified by the Settlement, is lawful, just and reasonable, supported by substantial evidence, and consistent with Commission precedent.

Regarding CGC's Exception No. 3, wherein CGC argues that the ALJs applied the wrong standard for approving a non-unanimous settlement, we find that the ALJs recognized that a non-unanimous settlement must: (1) be supported by substantial evidence, (2) be in the public interest, and (3) conform to the Code and Commission Orders and Regulations. In addition, the ALJs correctly stated that the Commission applies the same standard to both unanimous and non-unanimous settlements and that settlements must be reasonable and in the public interest. *See* R.D. at 8-9.

As the OCA pointed out, the Recommended Decision includes an extensive analysis and recommendation section on the MRPL issue. OCA R. Exc. at 25. Similarly, we find that CGC's assertion that the ALJs heavily relied on recent Commission orders in *UGI Electric* and *PPL Electric*, without properly engaging with the record in this proceeding, is belied by the structure and content of the Recommended Decision. Specifically, the ALJs first evaluated FirstEnergy's MRPL proposal directly against the Commission's regulation defining the MRPL construct. *See* R.D. at 112. After making this evaluation, the ALJs considered recent Commission orders and rulings from the Commonwealth Court regarding similar MRPL provisions. *See Id.* at 112-13. The ALJs also addressed and analyzed CGC's arguments regarding improper venue and the MRPL establishing customer classifications based on a customer's demand level, finding such arguments legally and evidentially lacking. *See Id.* at 113-14.

Accordingly, we find that the ALJs applied the correct legal standard to the Settlement, resulting in a record-based analysis and recommendation; therefore, CGC's Exception No. 3 is denied.

h. CGC Exception Nos. 4-6

In its Exception No. 4, CGC avers that the Commission's Regulations define MRPL in terms of demand and do not permit the treatment of generation supply as demand as FirstEnergy's MRPL definition proposes. CGC Exc. at 21 (citing R.D. at 104; 52 Pa. Code § 54.182). CGC avers that FirstEnergy and the ALJs relied on the last clause of Section 54.182 to justify the MRPL departure from the Regulation. The last clause of the regulation reads as follows: "as may be further defined by the EDC tariff in a particular service territory." CGC Exc. at 21-22 (citing 52 Pa. Code § 54.182; FirstEnergy St. 1 at 16). CGC argues that FirstEnergy is rewriting the regulation. CGC contends that approval of the MRPL "would signal to all EDCs that it is permissible to expand a clear regulatory definition to meet unjustified policy ends." CGC Exc. at 22. CGC avers that the MRPL proposal violates 52 Pa. Code § 54.187, which requires that customers with peak load up to 25 kW have rates changed no more than quarterly, a single-rate option, and a display of the PTC on the customer's bills. CGC Exc. at 23 (citing 52 Pa. Code § 54.187(h) and 52 Pa. Code § 54.187(c)).

In CGC's Exception No. 5, CGC argues that the ALJs erred in recommending that the Commission approve the Settlement, as it violates the text and intent of the AEPS Act. CGC maintains that Section 5 of the AEPS Act requires that customer-generators be compensated for excess generation at full retail value. CGC Exc. at 25 (citing 73 Pa.C.S. § 1648.5). CGC claims that the ALJs erred by not applying the text of Section 5 of the AEPS Act correctly. CGC Exc. at 26.

In CGC Exception No. 6, CGC provides that the Settlement violates Act 129. According to CGC, Act 129 requires default service providers to offer a rate that changes no more frequently than quarterly for residential and small business customers. CGC avers that since most customer generators have peak load at or below 25 kW, the MRPL would violate this provision of Act 129. CGC Exc. at 27-28 (citing 66 Pa.C.S. § 2807(e)(7); 52 Pa. Code § 54.2).

i. Replies to CGC Exception Nos. 4-6

In its Replies to CGC Exception Nos. 4-6, FirstEnergy avers that 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. The ALJs made numerous detailed findings of fact regarding cost projections and grandfathering based on record evidence and carefully reviewed the arguments of the parties. FirstEnergy R. Exc. at 7-8.

In its Replies to the CGC Exception Nos. 4-6, the OCA provides that the Settlement does not violate the Commission's Regulations, the AEPS Act, or Act 129. The OCA notes that the MRPL is intended to place large customer-generators in the default service procurement class that best reflects their impact on FirstEnergy's load and procurement requirements. OCA R. Exc. at 13 (citing R.D. at 96-98).

The OCA provides that the ALJs considered 52 Pa. Code §§ 54.182, 54.187, and 69.1805 and explained that the Settlement would classify non-residential customers based on peak demand or MRPL, which would be defined according to the customer's net demand contribution. OCA R. Exc. at 13 (citing R.D. at 17, 54, 97-98, 102-04). According to the OCA, the ALJs evaluated CGC's contention that MRPL could not account for customer generation and rejected that position, relying in part on the Commission's prior treatment of comparable MRPL concepts and the Commonwealth

Court’s decision affirming UGI’s use of a peak-load construct to reclassify certain large net-metered customer-generators. OCA R. Exc. at 13-14 (citing R.D. at 104-05). Therefore, the OCA provides, the ALJs did not “rewrite” the regulation through a tariff, rather, it concluded that the proposed MRPL fell within the regulatory framework governing FirstEnergy’s default-service procurement classes. OCA R. Exc. at 14 (citing R.D. at 104-15).

The OCA submits that CGC, in its Exception No. 5, repeats an argument that is countered by *Penn Renewables*, which holds that an hourly-priced default service tariff can satisfy AEPS’s “full retail value” requirement so long as the applicable rate reflects the full bundled cost of retail electric service. OCA R. Exc. at 14-15 (citing OCA R.B. at 30-31; *Penn Renewables* at 10-13).

The OCA disagrees with CGC’s assertion that customers with an actual registered peak load below 25 kW must remain in the small business/default service class and, therefore, cannot be placed on the hourly-priced HP Rider. The OCA notes that the MRPL methodology is intended to capture a customer-generator’s broader impact on default-service procurement, including the effects of customer-generation. OCA R. Exc. at 15 (citing CGC Exc. at 27-28; R.D. at 103). The OCA reasons that Act 129 does not require FirstEnergy to classify every customer-generator solely by its instantaneous or registered net demand. OCA R. Exc. at 15 (citing *Penn Renewables*).

j. Disposition of CGC Exception Nos. 4-6

We reject each of CGC’s arguments in its Exception Nos. 4-6 that the MRPL is inconsistent with the Code and Commission Regulations and does not comply with the AEPS Act or Act 129. In its Exception No. 4, CGC avers that FirstEnergy’s definition of MRPL is “an adulteration and substitution of plain text.” CGC avers that FirstEnergy’s definition is an attempt by FirstEnergy to treat generation as demand and

thereby rewrite the regulation. CGC Exc. at 21-22. Section 54.182 of the Commission's Regulations, 52 Pa. Code § 54.182, defines MRPL as "[t]he highest level of demand for a particular customer, based on the PJM 'Peak Load Contribution Standard,' or its equivalent, and as may be further defined by the EDC's tariff in a particular service territory." We emphasize that the Commission's MRPL definition states, "and as may be further defined in the EDC's tariff in a particular territory." Here, FirstEnergy proposes to define MRPL as "a customer's net demand contribution impact to the Company's default service procurement activity, as determined upon the net power flow from or into the Company's distribution system," and this proposal has been incorporated into the Settlement. FirstEnergy St. 1 (Corrected) at 16; FirstEnergy Exh. DMY-6; Settlement, ¶ 36.

Under the circumstances, we agree with the ALJs that the MRPL provisions in this case are consistent with recent Commission decisions as well as Commonwealth Court decisions. In *UGI Electric*, the Commission approved UGI's classification of customers based on peak demand or peak generation, and the Commission's decision was affirmed by the Commonwealth Court. The Commission also approved a nearly identical definition of MRPL in the recent *PPL Electric* proceeding, as well as a determination of billing demand to include both consumption and production of energy in *Citizens' Electric*. In these prior cases, classification of customers was not limited to peak demand. We agree with the ALJs that the Commonwealth Court's affirmation of UGI's DSP set a clear precedent that utilizing peak load constructs to reclassify customers is legal and does not violate retail net-metering protections. R.D. at 113 (citing *Penn Renewables*). Therefore, we shall deny CGC's Exception No. 4.

In its Exception No. 5, CGC avers that the MRPL violates the AEPS Act provision requiring that net-metered generation is compensated at the "full retail value." In *Penn Renewables*, the Commonwealth Court determined that an hourly-priced default service tariff can satisfy AEPS's "full retail value" requirement so long as the applicable

rate reflects the full bundled cost of retail electric service and that the Commission has been vested with authority under the AEPS Act to determine what constitutes “full retail value.” *Penn Renewables*, 361 A.3d at 660-62. The record demonstrates that the customer-generators moved to the HP Rider rate from the PTC rate will still be compensated at the “full retail value” of the LMP hourly price. They are not entitled to the PTC rate, and customer-generators have other options to obtain compensation for excess generation including bilateral power purchase contracts. The record shows that customer-generator compensation on the HP Rider rate may remain above the rate customer-generators might receive in the wholesale market. FirstEnergy St. 1-R at 18. Accordingly, we shall deny CGC’s Exception No. 5.

In its Exception No. 6, CGC claims that the MRPL violates Act 129 because residential and small business customers are required to have a rate that changes no more frequently than quarterly, and most large customer-generators have a load of less than 25 kW and would be considered small business customers. CGC Exc. at 27-28. We disagree. We note that Act 129 does not require a public utility to classify customer-generators only by net demand, nor does Act 129 prescribe a particular default-service rate design methodology. As such, the Commission has the discretion to determine an appropriate structure consistent with the statutory requirements. *Penn Renewables* at 660. Therefore, we shall deny CGC’s Exception No. 6.

3. Grandfathering Proposals

a. Positions of the Parties

FirstEnergy’s MRPL proposal included a two-year “grandfathering” period for customer-generators operating as of June 1, 2027, and the Settlement incorporates a fifteen-year period in which the HP Rider will include capacity and line losses (absent a material change in the capacity markets operated by PJM). FirstEnergy M.B. at 33

(citing Joint Petition ¶¶ 36-38). FirstEnergy disagreed with JSA’s proposal that projects operating on or before June 1, 2027 would continue to be compensated at the PTC Rider rate for their excess generation for a 25-year period with “transitional projects” (defined as those projects that have met certain development criteria, *e.g.*, executing interconnection and construction services agreements with FirstEnergy) provided with a fifteen-year period of continuing PTC Rider rate. FirstEnergy M.B. at 33 (citing JSA St. 1 at 61-68). FirstEnergy argued that JSA’s grandfathering proposal would result in substantial increases in the current PTC prices throughout FirstEnergy’s territory. FirstEnergy M.B. at 33 (citing FirstEnergy St. 1-R at 23-24).

The OCA’s witness, Dr. Ogur, provided that both the 25-year grandfathering for completed projects and 15-year grandfathering for pre-construction projects as proposed by JSA, even at 90 percent of the commercial PTC rate as JSA recommended, are excessive. OCA M.B. at 29 (citing OCA St. 1R at 23-24). The OCA averred that the Company’s two-year grandfathering proposal appropriately balances the need to protect small commercial customers from continued cost shifting and the needs of existing customer-generators that made investments based on the compensation structure in place at the time of their investment. OCA M.B. at 30 (citing OCA St. 1-R at 23-24; FirstEnergy St. 1-R at 23-24).

The OSBA’s witness, Mr. Malukoff, supported the Company’s grandfathering proposal, noting that extending the transition period beyond June 1, 2029 would continue the inequitable status quo where small business customers bear the burden of compensating large customer-generators. OSBA St. 1-R at 3.

Dimension argued that its concerns about grandfathering were not all addressed in the Settlement. According to Dimension, the two-year grandfathering period through 2029 and no grandfathering at all for new customers is not sufficient to provide adequate relief for costly projects that have been completed or that are advanced

in construction. When planned, those proposals relied upon the existing rate structure. Dimension M.B. at 7. Dimension noted that many of the expenses for these projects have already occurred. Dimension opined that the ten-year grandfathering provision in *PPL Electric* was determined to be a reasonable transitional protection for customer-generators. *Id.* at 7 (citing *PPL Electric* at 202).

Rather than proposing a grandfathering alternative, CGC recommended the rejection of the MRPL proposal in its entirety. CGC provided that the proposed two-year grandfathering period is inadequate as project planning, valuation, and financing were all based on the existing tariff structure and the PTC Rider. CGC M.B. at 46 (citing CGC St. 1 at 21; Settlement ¶ 36).

JSA's alternative grandfathering proposal separated projects into two tiers based on their status as operational or near operational. For each tier, the proposal provides for: (1) qualification or eligibility criteria, and (2) a defined legacy rights (or grandfathering of the status quo regarding PTC Rider rate applicability) duration that is applicable to all net-metered projects in FirstEnergy's territory. The proposal includes a 25-year grandfathering period for completed or nearly completed projects and a 15-year grandfathering period at a 90% PTC rate for pre-construction, not yet operational projects that meet project development milestones by June 1, 2027. JSA M.B. at 33-35. JSA contended that there is a potential solution to any significant rate impact in the Penn Power rate district – a shorter grandfather period with a MW cap. JSA noted the exception granted for “agricultural customer-generators being subject to the MRPL in *PPL Electric*.” *Id.* at 39 (citing *PPL Electric* at 223-24). JSA advised that if the Commission disagrees with JSA's analysis, a grandfathering period of ten years should be approved. JSA M.B. at 37.

Walmart supported the Company's MRPL proposal with provisions that FirstEnergy maintain certain structural components of the HP Rider, including capacity

and line losses of customer-generator compensation until May 31, 2041, absent a material change in the capacity markets operated by PJM. Walmart Statement in Support at 2-3 (citing Settlement ¶ 38).

b. Recommended Decision

The ALJs agreed with the arguments advanced by FirstEnergy, the OCA and the OSBA with respect to the grandfathering provision contained in the Settlement. The ALJs rejected the alternative grandfathering proposals offered in this proceeding because they found the grandfathering provision contained in the Settlement to be appropriate and in accordance with applicable law. R.D. at 131.

According to the ALJs, the record established that large customer-generators create distinct procurement risks and costs that are not shared by similarly situated small commercial customers. The ALJs found that continuing to recover those costs through the Commercial PTC Rider would perpetuate an unreasonable subsidy where small commercial customers bear costs associated with the benefits received by large customer-generators. In the ALJs' view, the record demonstrates that certain large net-metered customer-generators, particularly those with little or no onsite electric load, are currently receiving benefits under the PTC Rider that were not intended for customers of their size or usage. As a result, the costs associated with those customers are shifted to other default service customers, including small businesses that do not own generation facilities. R.D. at 132 (citing OSBA Statement in Support at 5).

The ALJs recommended that the Commission reject JSA's proposed grandfathering provisions and ensure that customer classifications and cost recovery mechanisms accurately reflect the costs and risks associated with serving each customer

group. The ALJs recommended approval of the Settlement as a whole, including the grandfathering provision. R.D. at 132.

The ALJs explained that the 2-year grandfathering provision agreed to by the Settlement Parties, that customer-generators online prior to June 1, 2027 will be exempt from the MRPL proposal until June 1, 2029, including the statutory parties involved in this proceeding, must be considered in conjunction with the Settlement Paragraph immediately following it, Settlement Paragraph 38. Settlement Paragraph 38 provides that for purposes of determining compensation for net excess generation for customer-generators taking service under the HP Rider, such compensation shall include capacity and line loss portions of the HP Rider until May 31, 2041, absent a material change in the capacity markets operated by PJM. In the event of such an occurrence, the Settlement requires FirstEnergy to notify and meet with parties to the Settlement, including Walmart, to discuss the proposed changes and their impact on customer-generator compensation at least 30 days in advance of any Commission filing. R.D. at 132 (citing Settlement ¶ 38).

The ALJs found that the Settlement term providing the Company's commitment not to change certain structural components of the HP Rider for a period of fifteen years provides some stability for prospective customer-generators to move forward with solar projects. The ALJs concluded that the Settlement terms regarding the grandfathering proposal are a reasonable compromise and recommended approval. R.D. at 132 (citing Walmart Statement in Support at 3).

c. Exceptions and Replies

(1) JSA Exception No. 1

In its Exception No. 1, JSA provides that during the development of net-metering projects, the project owners incur significant costs, such as site control, interconnection studies, and electric system upgrades. JSA Exc. at 4 (citing JSA St. 1 at 62-63). JSA asserts that project owners rely on the rules and terms by which a customer rate schedule is determined and the compensation provided to a net-metered project under a specific rate schedule to make decisions regarding their investments. JSA Exc. at 5 (citing JSA St. 1 at 62-63). JSA contends that a two-year grandfathering period fails to provide adequate protection to customer-generators that relied on the current rules. JSA Exc. at 5-6.

(2) JSA Exception No. 2

In its Exception No. 2, JSA argues that the two-year grandfathering period is not consistent with the ten-year grandfathering period in the *PPL Electric* case. JSA Exc. at 6. JSA explains that the *PPL Electric* settlement included a ten-year grandfathering period for operational and near operational net-metered projects with a cap of 140 MW. While the ALJs in this proceeding noted that Settlement Paragraph 38 is “very similar” to a provision in the *PPL Electric* settlement, JSA disagrees. JSA provides that there is problematic language in Paragraph 38, specifically - “*absent a material change in the capacity markets operated by PJM*” - not found in the *PPL Electric* Settlement. JSA Exc. at 7-8 (citing R.D. at 119-20, 132). JSA avers that this provision appears to address an issue that was not part of FirstEnergy’s Petition, was not properly vetted by the parties, and would treat all customer-generators, other than Walmart, unfairly. According to JSA, Paragraph 38 only requires FirstEnergy to notify and meet with Walmart before a Commission filing is made. JSA asserts that the term “material

change” is vague and ties an outcome of the Settlement to wholesale market actions not controlled by FirstEnergy or the Commission. Additionally, JSA notes that recent actions from both PJM and the FERC signal potential changes to the PJM capacity market. JSA Exc. at 9. Because of the likely changes to the PJM capacity market, JSA asserts that Paragraph 38 increases the market uncertainty for net-metered customer-generators. *Id.* at 10.

JSA maintains that the ALJs did not address JSA’s proposal for a 10-year grandfathering period with a provision to address the Penn Power Rate District. JSA avers that its proposal would accomplish the objectives of FirstEnergy and the customer-generators. JSA Exc. at 11. JSA recommends that the Commission strike Paragraph 38 or in the alternative, delete the phrase “absent a material change in the capacity markets operated by PJM.” JSA Exc. at 15.

(3) Dimension Exception No. 1

In its Exception No. 1, Dimension avers that the two-year grandfathering provision does not consider the multi-million-dollar decisions made by Dimension, JSA and others about solar development based on the reimbursement for excess energy provided by the current rate structure. Dimension maintains that the 10-year grandfathering provision in *PPL Electric* should be adopted as a standard. Dimension Exc. at 2.

(4) Dimension Exception Nos. 2 and 3

In its Exception No. 2, Dimension sets forth that Paragraph 38 of the Settlement locks in two components of a rate structure for a period of fifteen years, except if FirstEnergy seeks a change, and is therefore, “not a sound procedure.” Dimension Exc. at 3. In its Exception No. 3, Dimension contends that the Recommended

Decision, if adopted, would lead to great unfairness and the stifling of the solar industry in Pennsylvania. Dimension Exc. at 4.

(5) Replies

In its Replies to JSA Exception Nos. 1 and 2 and Dimension Exception Nos. 1-3, FirstEnergy reasons that the Commonwealth Court and the Commission have made clear that Pennsylvania law does not preclude FirstEnergy's MRPL classification, and the ALJs concluded that customer-generators are not entitled to the PTC Rider. FirstEnergy R. Exc. at 9 (citing *Penn Renewables* at 12, 14, 17; *PPL Electric* at 171, 202; R.D. at 242 (COL No. 22)).

According to FirstEnergy, the ALJs considered the arguments of JSA and Dimension, but determined that the 25-year grandfathering period for operating projects proposed by JSA would result in substantial and unreasonable increases in commercial default rates throughout FirstEnergy's territory, without any new customer-generators and with compensation at 90% of the commercial PTC as JSA proposed. FirstEnergy R. Exc. at 9 (citing R.D. at 23 (FOF Nos. 60-61)). FirstEnergy notes that while the Commission approved a 10-year grandfathering period in *PPL Electric*, the settlement in that case also included a capacity cap of 140 MW with an associated PTC increase of about \$0.02/kWh.

FirstEnergy avers that the ALJs correctly concluded that the Settlement's revised HP Rider was a "reasonable compromise" and recommended approval of FirstEnergy's maintaining the HP Rider capacity and line loss provisions until May 31, 2041, absent a material change in PJM's capacity markets. FirstEnergy R. Exc. at 10 (citing R.D. at 119-20, 125; Walmart Statement in Support at 3). In response to JSA and Dimension's argument that the provision leaves FirstEnergy too much flexibility, FirstEnergy notes that the Settlement requires FirstEnergy 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. FirstEnergy R. Exc. at 10 (citing Dimension Exc. at 3-4; JSA Exc. at 10-11).

In its Replies to JSA Exception Nos. 1 and 2 and Dimension Exception Nos. 1 and 2, the OCA avers that the record establishes that large customer-generators create procurement risks and costs that are not shared by similarly situated small commercial customers and that continuing to recover those costs through the PTC Rider would perpetuate an unreasonable subsidy borne by small commercial customers. OCA R. Exc. at 4 (citing R.D. at 132-33; OCA M.B. at 28-30; OCA Statement in Support at 23-24). Additionally, the OCA notes that lengthy grandfathering periods would perpetuate the existing cost shift. OCA R. Exc. at 4 (citing OCA R.B. at 35-36; R.D. at 132-33).

The OCA disagrees with Dimension's assertion that the 15-year HP Rider treatment lacks evidentiary support. OCA R. Exc. at 6 (citing Dimension Exc. at 2-3). The OCA contends that the ALJs considered the 15-year HP Rider continuation of compensation to include the capacity and line-loss components absent a material change in PJM's capacity markets along with the two-year grandfathering period. OCA R. Exc. at 6 (citing R.D. at 132-33). The OCA reasons that the record demonstrates that large customer-generators create procurement risks and costs that differ from those of small commercial customers and continuing to assign those customers to the PTC Rider would shift costs and risks to other default service customers. OCA R. Exc. at 6-7 (citing R.D. at 132-33).

d. Disposition of JSA Exception Nos. 1 - 2 and Dimension Exception Nos. 1-3

JSA and Dimension argue that the two-year grandfathering period is too short and is not in the public interest. The ALJs found the two-year grandfathering period, combined with the 15-year capacity and line loss provisions of Paragraph 38 of the Settlement, to be a reasonable compromise. The ALJs also recommended that the Commission reject JSA's proposed grandfathering provisions. R.D. at 132. The ALJs found that JSA's proposals for 25-year and 15-year grandfathering were excessive, even at 90% of the commercial PTC, and the 25-year grandfathering period would result in unreasonable increases in the PTC Rider for all of FirstEnergy's Rate Districts. R.D. at 23, FOF Nos. 60-61 (citing OCA St. 1R at 22-23; FirstEnergy St. 1R at 23-24 and Table 3). We agree with the ALJs' findings regarding the two-year grandfathering period and the provisions of Paragraph 38 of the Settlement for the reasons below.

FirstEnergy provided that it selected the two-year period as it will ensure the reclassification of non-residential default service customers before the beginning of FirstEnergy's next default service program on June 1, 2031. FirstEnergy notes that extending the grandfathering period beyond two years would undermine the cost equity, and customers who are not customer-generators would continue to bear disproportionate costs. FirstEnergy asserts, and we agree, that solar developers are not guaranteed a return on their investment, particularly when other customers subsidize costs.

FirstEnergy St. 1-R at 23. FirstEnergy demonstrated that JSA's 25-year grandfathering proposal (including only the currently operational customer-generators) would lead to increased PTC rates due to true-up expenses throughout its territory, ranging from 25% in the Met-Ed Rate District to 23,660% in the Penn Power Rate District. If all the current projects in FirstEnergy's queue became operational, the PTC would increase by 667% in the Met-Ed Rate District and 132,980% in the Penn Power Rate District.

FirstEnergy St. 1-R at 24, Table 3. These increases are much higher than the

Commission approved in *PPL Electric* in which the settlement incorporated a capacity cap of 140 MW with an associated PTC increase of about \$0.02/kWh. *PPL Electric* at 133.

Although Dimension contends that there is no distinction between this proceeding and the *PPL Electric* proceeding, where a 10-year grandfathering period was part of the settlement in that case, we disagree. Dimension Exc. at 2-3. JSA also argues that the 2-year grandfathering period here is not consistent with the 10-year period in *PPL Electric*. JSA Exc. at 6. The *PPL Electric* Settlement does not set a precedent here. While the 10-year grandfathering period in *PPL Electric* was appropriate for the circumstances of that case, the record in this case does not support a 10-year grandfathering period. Here, the 2029 true-up costs are expected to be \$59 million with just 10% of the customer-generator projects in queue coming online. FirstEnergy St. 1-RJ at 2.

We conclude that there is a crucial difference between FirstEnergy default service customers and PPL default service customers under the settlement in that case. The Commission approved the 10-year grandfathering provision for PPL Electric with the 140 MW cap on customer generator projects, which would result in about a \$0.02/kWh increase to the PTC while mitigating potential impacts. JSA's grandfathering proposal would result in a 22% increase in the PTC for Penn Power as early as 2029. JSA St. 1; JSA Exh. TM-10.

Dimension and JSA argue that the Settlement's revised HP Rider provides FirstEnergy with too much flexibility, but we note that FirstEnergy must meet with the Settling Parties to discuss any proposed changes and those changes would be subject to review by the Commission. Dimension does not support the 15-year commitment by FirstEnergy to include capacity and line losses in the HP Rider. Another solar developer, Walmart, supported the Settlement and the 15-year provision. Walmart's witness,

Mr. Steven Chriss, reasoned that the inclusion of capacity and line losses was a “reasonable compromise” and provided “some stability” for Walmart’s solar development plans. Walmart Statement in Support at 3. We agree with the OCA and Walmart that the adjustments to the HP Rider, which preserve capacity and line-loss components of the HP Rider through 2041, provide additional protections and a measure of stability to customer-generators.

We agree with the OCA that the ALJs have balanced the interests of the customer-generators with the interests of the other default service customers, considering the costs and risks that continued grandfathering would levy on other customers. OCA R. Exc. at 6. Accordingly, we shall deny JSA Exception Nos. 1 and 2 and Dimension Exception Nos. 1-3.

C. Rate Design and Cost Recovery

1. Price to Compare Default Service Rate Rider

a. Positions of the Parties

The Settlement modifies FirstEnergy’s original proposed PTC Rider to reconcile residential default service rates on an annual, instead of semi-annual, basis. The Company avers the PTC Rider rate design set forth in the Settlement fully complies with the Commission’s default service regulations and the Code. Pursuant to the Settlement, First Energy recovers default service costs from default service customers through its PTC Rider for residential and commercial rate classes. The Company’s PTC Rider will continue to recover: (1) generation costs, certain transmission costs, ancillary service costs, and AEPS compliance costs; (2) supply management and administrative costs; (3) applicable taxes; and (4) a charge or credit, or E-Factor, for reconciliation of any under or overcollection of actual revenues against actual costs for each class from

prior rate periods consistent with the Commission's Policy Statement regarding default service and retail electric markets at 52 Pa. Code § 69.1808. FirstEnergy M.B. at 35.

The OCA noted the PTC Default Service Rate Rider has been resolved through the Settlement and is not a contested issue in this proceeding. OCA M.B. at 30.

The CGC did not take a position on the Company's PTC Default Service Rate Rider beyond how its position relating to the classification of non-residential default service customers may affect the PTC Rider. CGC M.B. at 46.

RESA took no position regarding FirstEnergy's PTC Default Service Rate Rider except to the extent it incorporates or reflects other contested proposals, including the proposed treatment of NITS costs, Capacity Proxy Pricing, and other procurement-related changes. RESA M.B. at 27.

b. Recommended Decision

The ALJs recommended approving the rate design contained in the Settlement. The ALJs stated that the default service rider fully complies with the Commission's default service regulations and the Code, where FirstEnergy recovers default service costs from default service customers through its PTC Rider and HP Rider. R.D. at 137.

c. Disposition

No Exceptions were filed objecting to the ALJs' recommendation on this issue. Therefore, we shall adopt the ALJs' recommendation to adopt the Settlement concerning the PTC Rider, finding the recommendation to be reasonable and supported by substantial evidence in the record.

2. Hourly Pricing Default Service Rider

a. Positions of the Parties

FirstEnergy proposed to continue to use its HP Rider approved by the Commission in the DSP VI proceeding to recover the cost of default service for industrial class customers, including customer-generators with a MRPL of 100 kW or above, with the modification that the hourly-priced product will no longer include a \$4.00 per mWh adder for winning suppliers. FirstEnergy St. 4 at 3-4. The default service rates established pursuant to the HP Rider will be based on the PJM hourly LMP for each Rate District's respective PJM-designated transmission zone plus associated costs, such as capacity, ancillary services, PJM administrative expenses and costs to comply with AEPS requirements that are incurred to provide hourly pricing default service. Additionally, FirstEnergy proposed that the default service rates also will include an E-Factor to continue reconciling costs and revenues on a semi-annual basis. The Settlement adopts the Company's HP Rider with the modification that the hourly-priced product will no longer include a \$4.00 per mWh adder for winning suppliers. FirstEnergy M.B. at 37-38.

As discussed earlier, the OCA supports FirstEnergy's definition of MRPL that identifies customers based on their impact on default service procurement and associated costs. The OCA noted that large customer-generators may introduce uncertainty into default service load requirements and create procurement risks that differ from smaller commercial customers. Therefore, the OCA agrees with the Company's proposal to apply the HP Rider to customers that have an impact on default service where their procurement characteristics, load impacts, and associated risks are comparable to industrial customers. OCA M.B. at 16-17, 30-32.

The CGC did not take a position on FirstEnergy's HP Rider beyond how its position relating to the Company's classification of customers based on MRPL may affect the application of the HP Rider. CGC M.B.at 46.

RESA stated that by eliminating the \$4.00 per mWh added for winning suppliers in hourly-priced auctions, suppliers will be required to consider all costs of providing full-requirements supply in their bid price. Further, RESA argued that the HP Rider does not reflect full-requirements since FirstEnergy does not include NITS in default service procurement. RESA M.B. at 27-28.

b. Recommended Decision

The ALJs recommended adopting the HP Rider Settlement terms as proposed by FirstEnergy. Based on the OCA's position, the ALJs agreed that classifying customers based on both demand and MRPL appropriately aligns customers with similar load characteristics and procurement risks. The ALJs noted by maintaining separate procurement and pricing structures for these customers, these Settlement terms help ensure that the costs associated with serving larger, more sophisticated customers are borne by the customers who create those costs, rather than being shifted to smaller commercial customers. R.D. at 144.

Next, the ALJs agreed with the Settlement utilizing an hourly pricing structure, where default service rates continue to reflect PJM hourly locational marginal prices, capacity costs, ancillary service costs, PJM administrative expenses, AEPS compliance costs, and a semiannual reconciliation through the E-Factor. The ALJs found that this design appropriately reflects the market-based cost of serving large commercial and industrial customers, who are generally better equipped to understand and respond to hourly price signals than smaller customers. Additionally, the ALJs stated this pricing structure also promotes efficient wholesale market participation while ensuring that

default service customers continue to pay rates that accurately reflect the costs incurred to serve them. R.D. at 145.

Finally, the ALJs noted the Settlement retains the Company's proposed methodology for including customer-generators with a MRPL of 100 kW or greater under the HP Rider, subject to the agreed-upon commitment regarding excess generation compensation. The ALJs recognized that this approach appropriately recognizes the procurement impacts associated with large customer-generators while protecting smaller commercial customers from increased procurement risk and potential cost shifting. Based on the foregoing, the ALJs found the Settlement is in the public interest because it uses a customer classification framework that aligns procurement costs with cost causation principles and promotes fair cost allocation among customer classes. R.D. at 145.

c. Disposition

No Exceptions were filed objecting to the ALJs' recommendation on this issue. We find that the ALJs' recommendation is supported by substantial evidence in the record. Therefore, we shall adopt the ALJs' recommendation to adopt the Settlement concerning the HP Rider.

D. Customer Referral Program

1. Positions of the Parties

FirstEnergy described its CRP as a program that provides eligible customers with an opportunity to select from among a group of EGSs who had voluntarily chosen to offer customers a twelve-month contract priced at least 7% below FirstEnergy's applicable PTC at the time of the offer. FirstEnergy M.B. at 38.

FirstEnergy stated that in the *FirstEnergy DSP VI* Settlement proceeding, the OCA and CAUSE-PA opposed continuation of the CRP due to concerns regarding the prices CRP customers pay for electric supply after the initial 12-month contract and that under the DSP VI Settlement, the Predecessor Companies agreed that the CRP would terminate on May 31, 2027. *Id.* at 38-39 (citing FirstEnergy St. 4 at 10-11). Additionally, FirstEnergy noted that consistent with the DSP VI Settlement, the Company convened a collaborative (CRP collaborative) to review CRP metrics, including supplier participation, customer enrollment levels, and the prices CRP customers pay for competitive generation service during and after the 12-month CRP contract term. According to FirstEnergy, none of the parties attending the CRP collaborative requested that FirstEnergy include a successor CRP in DSP VII. FirstEnergy submitted that the Company's determination not to propose the implementation of a successor CRP for DSP VII was based on the Company's analysis of the data collected and reviewed during the CRP collaborative. FirstEnergy M.B. at 39 (citing FirstEnergy St. 4 at 10-11).

FirstEnergy noted the OCA and CAUSE-PA's support for the Company's proposal while also noting RESA and Town Square and WGL's opposition to discontinuation of the program and proposal that the Company hold another collaborative. FirstEnergy M.B. at 39 (citing RESA St. 1 at 57-61; RESA St. 1-SR at 22). In response to RESA and Town Square and WGL's argument that the CRP has produced cumulative customer savings of \$750,000 from January 2025 through February 2026, FirstEnergy contended that the \$750,000 figure represents savings at the moment of enrollment based on the then-current PTC, not supplier competitive offerings. Similarly, in response to RESA and Town Square and WGL's request that the Company hold another CRP collaborative to identify reforms to improve supplier and customer participation, FirstEnergy asserted that the CRP collaborative held under the DSP VI Settlement was the precise forum that RESA and Town Square are now requesting, yet at the CRP collaborative RESA, who was represented at the collaborative, failed to propose any improvements and neither RESA nor Town Square and WGL provided any

additional feedback to the Company. FirstEnergy R.B. at 32. According to FirstEnergy, the Settlement provision to discontinue the CRP balances the interests of customers, participating EGSs, and commitments under the DSP VI Settlement. FirstEnergy M.B. at 40.

The OCA argued that the CRP has experienced declining supplier participation, minimal customer enrollment, and persistent consumer protection concerns and noted its continued support for discontinuation of the CRP contending that the program primarily benefits participating EGSs rather than the consumer. OCA M.B. at 33 (citing OCA St. 2 at 5-8). According to the OCA, the CRP suffers from several structural flaws because the program creates the appearance of guaranteed savings while exposing customers to higher prices after enrollment and allowing suppliers to capitalize on customer inaction through automatic renewals. OCA M.B. at 33-34 (citing OCA St. 2 at 6-7; OCA St. 2R at 7). In response to RESA's argument, *infra*, to continue the CRP because discontinuing the program would eliminate valuable discounts offered by EGSs, the OCA contended that such argument ignores the structural flaws of the program and only focuses on the benefits available at the time of enrollment. OCA M.B. at 35 (citing RESA St. 1 at 61; OCA St. 2 at 6-7; OCA St. 2-R at 6-7).

In response to RESA and Town Square and WGL's contention that any concerns identified by the OCA could be addressed through additional customer disclosures, customer education, or other program reforms rather than eliminating the CRP altogether, the OCA asserted that this is not a disclosure problem and that no additional customer education can change the fact that customers bear the risk of future PTC changes while suppliers retain the ability to participate only when doing so is economically advantageous. OCA R.B. at 39-40 (citing RESA M.B. at 30; OCA M.B. at 34). According to the OCA, RESA's recommendation that FirstEnergy and its stakeholders be directed to determine why supplier participation has declined and develop improvements to a program with clear structural defects will come at a cost to

the Company and will not provide any meaningful benefits to consumers. OCA R.B. at 41 (citing RESA M.B. at 30-31). The OCA submitted that discontinuance of CRP appropriately balances the interests of customers and the competitive market as it eliminates a program that has outlived its usefulness, while preserving the ability of suppliers to compete. OCA M.B. at 36.

CAUSE-PA argued that the CRP is not producing positive outcomes for participants and is contributing to excessive charges, termination rates, and uncollectible expenses borne by other ratepayers. CAUSE-PA M.B. at 14 (citing CAUSE-PA St. 1 at 15-25, Exhs. 1-3; CAUSE-PA St. 1-R at 17-18, Exh 1-R). Therefore, CAUSE-PA submitted that the program should be discontinued in accordance with the DSP VI Settlement and the Settlement in this proceeding. CAUSE-PA M.B. at 14 (citing CAUSE-PA St. 1 at 28; Settlement at 17). In support, CAUSE-PA explained that while the program provides a passive on-ramp to the competitive market, it does not promote the active engagement necessary to set up consumers for success as short-term savings achieved at the outset of the program give way to higher prices. CAUSE-PA M.B. at 17 (citing OCA St. 2 at 6).

CAUSE-PA asserted that the record reflects limited supplier participation and low customer uptake in the CRP demonstrating a lack of interest in the program. Specifically, CAUSE-PA pointed to testimony showing that as of March 2026, there was only one active supplier participant and only 3% of eligible customers were enrolled in the CRP. CAUSE-PA M.B. at 14 (citing CAUSE-PA St. 1 at 28; OCA St. 2 at 6; FirstEnergy St. 3 at 11). CAUSE-PA contended that the program has run its course and is no longer necessary or prudent but has instead proven to have a harmful impact on residential and low-income customers. CAUSE-PA M.B. at 15. CAUSE-PA noted that the Commission recently approved the discontinuation of similar referral programs in PPL and Duquesne service territories. *Id.* at 16.

CAUSE-PA clarified that FirstEnergy did not propose to terminate this CRP in this proceeding, as termination of the program was agreed-upon in the DSP VI Settlement. CAUSE-PA further clarified that FirstEnergy did not propose a successor CRP in this case, nor was it required to do so. CAUSE-PA R.B. at 12 (citing CAUSE-PA M.B. at 15). Therefore, CAUSE-PA asserted that RESA and Town Square and WGL, as the proponents of a successor CRP, bear the burden of proof that renewal of the existing program is just, reasonable, and in the public interest. CAUSE-PA R.B. at 12. In response to RESA and Town Square and WGL's argument that FirstEnergy, the OCA, and CAUSE-PA did not evaluate alternative reforms that would allow the CRP to continue, CAUSE-PA contended that the CRP is a voluntary market enhancement program and its termination does not in any way restrict customer choice as customers who choose to be served by the retail supply market can do so without the CRP. *Id.* at 13-14 (citing RESA M.B. at 30-31; Town Square and WGL M.B. at 10; CAUSE-PA M.B. at 16-17). CAUSE-PA emphasized that neither RESA nor Town Square and WGL proposed a solid proposal addressing the documented harms associated with the current CRP, but rather speculated that future improvements might exist, which is not substantial evidence supporting continuation of the CRP. CAUSE-PA R.B. at 14-15. Therefore, CAUSE-PA submitted that the Settlement term to discontinue the CRP is consistent with the DSP VI Settlement and the priorities and obligations outlined by the Competition Act, will further the public interest, and is supported by substantial record evidence. CAUSE-PA M.B. at 17-18.

RESA argued that it opposes discontinuance of the CRP because the program has produced documented customer savings. RESA M.B. at 29. According to RESA, FirstEnergy's discovery response shows that participating customers achieved cumulative savings of more than \$750,000 compared to the applicable PTC across FirstEnergy service territories from January 2025 through February 2026. *Id.* (citing RESA St. 1-SR at 23; RESA Exh. FL-32). In addition, RESA asserted that FirstEnergy's reliance on the collaborative process conducted under the DSP VI Settlement to support

termination of the CRP is misplaced. According to RESA, such process primarily consisted of a presentation of FirstEnergy's historical participation data but did not meaningfully evaluate reforms to improve supplier and customer participation, customer education, and pricing methodology. RESA M.B. at 30 (citing RESA St. 1-SR at 22-24). RESA submitted that the Commission should reject the Settlement provision to terminate the CRP and instead order FirstEnergy to work with stakeholders to improve supplier and customer participation and customer education while preserving the affordability benefits that the program has provided Pennsylvania customers. RESA M.B. at 31.

Town Square and WGL argued that FirstEnergy, the OCA, and CAUSE-PA did not provide any evidence showing that the CRP has harmed customers. Town Square and WGL M.B. at 9. Rather, Town Square and WGL contended that the record reflects that customers who participated in the CRP paid \$750,000 less than they would have paid on default service in 2025 and 2026. *Id.* at 9-10 (citing RESA St. 1-SR at 23, RESA Exh. FL-32). According to Town Square and WGL, the only reason that FirstEnergy and other retail market opponents provided for terminating the CRP was the decline in program participation and that no evidence was submitted by these Parties regarding issues with customer complaints, satisfaction, or outcomes associated with the CRP. Town Square and WGL M.B. at 10 (citing RESA St. 1R at 23; RESA Exhs. FL-23, FL-24).

Town Square and WGL asserted that CAUSE-PA's only justification for discontinuation of the CRP was "overall adverse outcomes for residential customers in the retail markets." Town Square and WGL M.B. at 10. Town Square and WGL contended that the testimony of the OCA's witness, Ms. Barbara Alexander, misstated the amount of the discount provided under the CRP and the frequency of PTC changes, and failed to recognize that if the PTC drops, the customer can cancel its enrollment at any time with no penalty and return to default service. *Id.* (citing RESA St. 1-R at 24). Rather, Town Square and WGL argued that FirstEnergy PTCs have risen consistently and

dramatically over the past 5 years. Town Square and WGL M.B. at 10-11 (citing Town Square St. 1 at 11; Town Square and WGL Exh. RM-2). Therefore, Town Square and WGL submitted that the Commission should require FirstEnergy to continue its CRP during the DSP VII and conduct an analysis of the reasons for declining participation and ways to improve it and issue a report with such findings. Town Square and WGL M.B. at 13.

2. Recommended Decision

In the Recommended Decision, the ALJs noted that pursuant to the DSP VI Settlement, FirstEnergy must address whether a successor CRP should be implemented and provide the reasons for its proposal. R.D. at 162 (citing R.D. in *FirstEnergy DSP VI* at 37). The ALJs further noted their agreement with CAUSE-PA that RESA and Town Square and WGL, as the Parties sponsoring an alternative proposal, carry the burden of proof for their proposal by showing by a preponderance of the evidence that renewing the same CRP in FirstEnergy's DSP VII will better serve customers. R.D. at 162 (citing *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Joint Petition of Metro. Edison Co. and Pa. Elec. Co. for Approval of Their Default Service Programs*, Docket Nos. P-2009-2093053, P-2009-2093054 (Opinion and Order entered November 6, 2009) at 14).

The ALJs agreed with the Joint Petitioners that the CRP should be discontinued and recommended the denial of the proposal of RESA and Town Square and WGL for FirstEnergy to be required to analyze and prepare a report with suggestions for improving the program's participation levels and customer education. R.D. at 162. The ALJs stated that while the evidence offered by RESA and Town Square and WGL shows that the program saved participants \$750,000 from January 2025 through February 2026, significant numbers of CRP customers were rolled into contracts at prices higher than the PTC after expiration of the initial contract. *Id.* at 162-63. The ALJs

further noted that, as of March 2026, only one supplier was signed up to accept FirstEnergy's CRP enrollees. The ALJs found that placing customers at demonstrated risk by renewing the CRP when there is no reasonable assurance that the design issues can or will be reformed to address that risk is not in the public interest. *Id.* at 163. The ALJs further found that the Joint Petitioners demonstrated that the CRP reforms implemented for DSP VI did not eliminate concerns about the CRP's design and customer outcomes or generate meaningful supplier participation. Therefore, the ALJs recommended adoption of the Settlement term regarding the CRP. *Id.* (citing Settlement at ¶¶ 63-64).

3. RESA Exception No. 3 and Replies

In its Exception No. 3, RESA argues that while the ALJs acknowledged the savings and the proposal for further reform for the CRP, the ALJs relied on subsequent above-PTC renewals, declining supplier participation, and prior unsuccessful reforms to conclude there is no reasonable assurance that further reform would succeed. RESA Exc. at 26 (citing R.D. at 162-63). RESA argues that this demonstrates why the Recommended Decision is skeptical of further reform and does not establish that no reasonable alternative exists. RESA Exc. at 26. According to RESA, the evidence demonstrating that the current CRP has design problems and declining participation explains why the program may warrant change, but it does not establish that elimination is the only reasonable response, especially when the reform alternatives identified by RESA were not evaluated and the program itself produced documented below-PTC savings. *Id.* at 26-27.

In addition, RESA argues that the ALJs misconstrued the purpose of RESA's evidence of alternative reforms as affirmative proposals for which RESA has the burden of proof. According to RESA, it offered alternatives to show that the proponents for the CRP's termination did not establish the absence of reasonable approaches, not as

affirmative proposals. It is the position of RESA that the proponents bore the burden to establish that no reasonable alternative would adequately address the demonstrated harm. RESA Exc. at 27.

In its Reply to RESA's CRP-related Exceptions, FirstEnergy argues that, consistent with its obligations under the DSP VI Settlement, the Company held the CRP collaborative to review CRP metrics with stakeholders and proposed that a successor CRP not be implemented, providing testimony on the collaborative and metrics showing declining supplier participation and customer interest. FirstEnergy R. Exc. at 24 (citing R.D. at 162; FirstEnergy St. 4-R at 9). FirstEnergy points to the OCA's testimony demonstrating CRP customers ending up with contract prices in excess of the applicable PTC during DSP VI. FirstEnergy R. Exc. at 24 (citing R.D. at 159). According to FirstEnergy, none of the participants in the CRP collaborative, including RESA, requested that the CRP be continued, and RESA does not dispute this fact. FirstEnergy R. Exc. at 24.

FirstEnergy contends that the ALJs properly concluded that RESA has the burden of proof as a proponent for a successor CRP in DSP VII and that RESA did not establish that a successor CRP was in the public interest given the significant numbers of customers rolling onto contracts at higher prices and only one participating supplier despite the reforms to the program that were implemented in the Company's DSP VI. FirstEnergy R. Exc. at 24-25 (citing R.D. at 162, 163). FirstEnergy asserts that discontinuation of the CRP eliminates the additional harm of rollover contracts with higher prices after a PTC discount without any change in any customer's freedom to shop for generation supply. Therefore, FirstEnergy argues that RESA's CRP-related Exceptions should be denied. FirstEnergy R. Exc. at 25.

In its Reply to RESA's CRP-related Exceptions, the OCA highlights the CRP's declining supplier participation and structural features that can result in customers

paying more than the applicable PTC. OCA R. Exc. at 22 (citing OCA R.B. at 39-42). The OCA agrees with the ALJs that the opposing Parties have the burden of proof for implementation of a successor CRP because the DSP VI Settlement proceeding provided that the prior CRP would discontinue and that FirstEnergy would determine whether to propose a successor program. OCA R. Exc. at 23 (citing R.D. at 162). According to the OCA, the opposing Parties have not met this burden, but rather FirstEnergy demonstrated that it was in the public interest not to renew the CRP there is no reasonable assurance that the structural issues can or will be reformed to address the risk that enrolled customers will face increased prices after the end of the CRP term. OCA R. Exc. at 23 (citing R.D. at 163). Therefore, the OCA argues that the Commission should deny RESA's CRP-related Exceptions. OCA R. Exc. at 23.

4. Disposition

Upon review, we find that the ALJs properly applied the law, FirstEnergy met its obligations under the DSP VI Settlement with respect to the CRP and its burden of proof regarding its proposal to not implement a successor CRP, and RESA failed to meet its burden of proof regarding its proposal. Therefore, we will deny RESA's CRP-related Exceptions.

First, we find that FirstEnergy complied with its DSP VI Settlement obligations by convening a stakeholder collaborative to compile and review CRP metrics, distributing data regarding its CRP to all Parties to the DSP VI proceeding, and holding a meeting to discuss the CRP data. FirstEnergy St. 4-R at 8-9; *see* R.D. in *FirstEnergy DSP VI* at 39 (citing Joint Petition in DSP VI at ¶¶ 77-78). The participants at the CRP collaborative had an opportunity to discuss the potential data collection fields proposed by FirstEnergy and to make requests for additional data collection fields. *See* R.D. in *FirstEnergy DSP VI* at 39 (citing Joint Petition in *FirstEnergy DSP VI* at ¶ 78).

FirstEnergy also requested feedback from CRP collaborative participants regarding continuation of the CRP. FirstEnergy St. 4-R at 9.

The record indicates that none of the participants to the CRP collaborative meeting, including RESA, requested that FirstEnergy include a successor CRP in its DSP VII and RESA did not propose any improvements to the current CRP or provide any additional feedback to the Company. FirstEnergy St. 4-R at 9; M.B. at 39; R.B. at 32.

Second, in the DSP VI proceeding, FirstEnergy was directed to address, in its DSP VII, “whether a successor CRP should be implemented and is necessary and provide the reasons for [its] proposal.” R.D. in DSP VI at 37 (citing Joint Petition in DSP VI at ¶ 69). Based on FirstEnergy’s analysis of the data collected and reviewed during the CRP collaborative, the Company proposed, and the Joint Petitioners agreed in the Settlement in this proceeding, that a successor CRP should not be implemented. Joint Petition at ¶ 64. FirstEnergy explained that the reason for its proposal was due to a significant decline in EGS participation in the CRP and low interest in the program from eligible customers. FirstEnergy St. 4, Table 1. Specifically, FirstEnergy demonstrated that only 3% of the Company’s total eligible residential customers are enrolled in the CRP and that supplier participation has decreased by 50% in three of the FirstEnergy territories and by 100% in the Penelec territory. FirstEnergy St. 4 at 11. In addition, the OCA and CAUSE-PA both provided testimony that a significant number of CRP customers end up with contract prices in excess of the applicable PTC and the CRP produces significant adverse outcomes for FirstEnergy customers. OCA St. 2 at 7-8; CAUSE-PA St. 1 at 28-29; CAUSE-PA St. 1-R at 28-29. Therefore, we find that, based upon the record evidence, FirstEnergy met its obligations under the DSP VI Settlement and its initial burden of proof for its proposal in the instant proceeding.

Once FirstEnergy presented sufficient evidence to satisfy its burden of proof for its proposal to not implement a successor CRP, the burden of going forward

with the evidence shifted to RESA and Town Square and WGL to rebut the evidence of FirstEnergy. *See Burlison v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983). The evidence proffered by RESA and Town Square and WGL to support rejection of the CRP Settlement provision is that the CRP saved participating customers \$750,000, from January 2025 through February 2026. RESA M.B. at 29; Town Square and WGL M.B. at 9-10. We do not find the evidence of savings to customers to sufficiently rebut the substantial evidence provided by FirstEnergy. FirstEnergy demonstrated that supplier participation has substantially declined and has disappeared entirely in one rate district and that only 3% of eligible residential customers currently participate in the program. In addition, there is substantial evidence demonstrating that the CRP contains structural flaws that can result in customers paying more than the applicable PTC. While RESA pointed to the \$750,000 savings, FirstEnergy explained that this figure “represents savings at the moment of enrollment based on the then-current PTC, not supplier competitive offerings, and suffers from the same issues regarding lack of affirmative customer choice when the discounted contract term ends.” FirstEnergy R.B. at 32. As such, we find that FirstEnergy satisfied its burden of proof for its proposal not to implement a successor CRP.

In addition, because RESA advanced an affirmative proposal, namely a request that the Commission reject FirstEnergy’s proposal to discontinue the CRP and direct the Company to host a collaborative with stakeholders “to identify reforms that improve supplier participation, customer participation, and customer education while preserving the measurable affordability benefits the program has already delivered to Pennsylvania customers,” we agree with the ALJs that RESA bears the burden of proof on that issue. RESA M.B. at 31; RESA St. 1 at 58-59, 61; *See Pa. PUC v. Metro. Edison Co.*, Docket No. R- 00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (Order entered January 11, 2007); *Joint Default Service Plan for Citizens’ Electric Co. of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through*

May 31, 2013 (Citizens' Electric Co.), Docket Nos. P-2009-2110798 and P-2009-2110780 (Order entered February 26, 2010).

Upon review, we find that RESA did not meet its burden of proof for such proposal. As explained, *supra*, a successor CRP was not recommended through the CRP collaborative and is not supported by the record evidence. While RESA asserts that the specific reform alternatives that it identified were not evaluated and requests that another stakeholder collaborative be held on the CRP, we note that RESA previously had an opportunity to actively engage its specific ideas for reform during the CRP collaborative held under the DSP VI Settlement. However, the record reflects that RESA did not propose any improvements or provide any additional feedback to the Company at that time. FirstEnergy R.B. at 32. Moreover, we note that following the DSP VI, the CRP was subjected to reforms, including the CRP collaborative; however, these efforts did not eliminate the fundamental issues identified by FirstEnergy, the OCA, and CAUSE-PA in this proceeding. R.D. at 163; CAUSE-PA R.B. at 15.

Accordingly, we will adopt the Recommended Decision on this issue and deny RESA's CRP-related Exceptions. Further, FirstEnergy's CRP will terminate on May 31, 2027, in accordance with the DSP VI Settlement, and a successor CRP will not be implemented. It is important to note that while the CRP will terminate in May 2027 and a successor program will not be implemented, customers are still free to shop for competitive generation at any time and suppliers remain free to advertise, market, and enroll customers independently.

E. Supplier Coordination Tariff Changes and Retail Shopping Issues

FirstEnergy proposed, and the Settling Parties support, modifications to the Company's Supplier Tariff in two areas: (1) protocols for EGS arrangements with customers and (2) purchase of EGS receivables. Settlement ¶¶ 65-66; FirstEnergy St. 1

at 20-28; FirstEnergy Exh. CDL-4. The proposed modifications would require EGSs entering into new contracts with residential customers after June 1, 2027 to return those residential customers to default service at the end of the fixed duration contract term, absent the customer's affirmative choice to remain with the EGS in response to the notices required by the Commission's regulations at 52 Pa. Code § 54.10. FirstEnergy St. 1 at 20-21. Starting June 1, 2027, the proposed modifications would also require EGSs to provide an attestation of affirmative customer consent on a quarterly basis for all residential customers on variable-priced month-to-month products. To implement these changes, the Settling Parties requested a waiver of Section 54.10(3) of the Commission's Regulations. Settlement ¶ 73. Additionally, for all contracts entered into after June 1, 2027, EGSs on UCB must: (1) use "rate-ready" billing and (2) 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 PORs for that customer account. Settlement ¶ 67; FirstEnergy St. 1 at 21. RESA, WGL, Town Square, the EGS Parties, and Constellation oppose the Supplier Tariff changes and proposed modifications.

1. Return of Customers to Default Service at Contract Expiration

a. Positions of the Parties

FirstEnergy explained that it designed the proposed changes to its Supplier Tariff to encourage customers to make intentional choices about the cost of their generation supply and to provide an incentive for EGSs to consider the impact their pricing has on customer affordability. FirstEnergy M.B. at 40. FirstEnergy also explained that it proposed these tariff changes based on concerns shared by the Company,

the OCA, and CAUSE-PA about the impact of EGS charges in excess of default service rates on affordability, as the record evidence shows in this case:

- In 2025 alone, the Company's residential shopping customers, in aggregate, 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.
- In 2025, more than 80% of the EGSs serving FirstEnergy's residential customers charged a rate above the Company's applicable PTC.
- On average, from 2022 to 2025, the uncollectible expense per FirstEnergy residential shopping customer was \$22.83, or almost three times more than the uncollectible expense per residential default service customer (\$7.82).
- FirstEnergy residential shopping customers are up to 10 times more likely to have their service terminated than residential default service customers; in 2025, residential shopping customers were terminated at rates as high as 22%, compared to just 3% for residential default service customers.
- The Company's 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.
- Similarly, from 2022 to 2025, on average, 40% of the Company's total residential generation uncollectible expense was attributable to purchased EGS accounts receivables even though only 18% of residential customers were shopping over that same period.

Id. at 40, 42. FirstEnergy customer complaints related to competition issues, including slamming and high EGS prices, have been increasing in recent years, and were 50% higher in 2025 than in 2024. *Id.* at 42.

FirstEnergy argued that its proposed changes are particularly important to resolve issues associated with the current auto-renewal with customer opt-out process permitted in Section 54.10(3) of the Commission's Regulations, 52 Pa. Code § 54.10(3). The Company averred that, under that process, "if a customer does not respond to the required regulatory notices, EGSs currently have the right to 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." FirstEnergy stated that requiring residential customers to take affirmative action to remain with an EGS after the fixed-duration contract expires directly addresses concerns arising from residential customers unknowingly paying prices above the PTC. FirstEnergy asserted that the Supplier Tariff change also enhances, rather than restricts, customer choice by allowing customers to evaluate new contract terms and prices and make an informed decision before reenrolling with an EGS. FirstEnergy M.B. at 47. Moreover, FirstEnergy submitted that its proposed change does not harm the market, because EGSs may continue to offer any contract term and price they wish, including variable rate contracts, to FirstEnergy shopping customers. *Id.* at 49.

The OCA recommended that the Commission approve FirstEnergy's proposal requiring residential customers entering into new fixed-term contracts after June 1, 2027, to return to default service upon expiration of their contracts unless they affirmatively choose to remain with their current EGS or choose another supplier. OCA M.B. at 36. The OCA emphasized that there is substantial evidence in this case demonstrating customer harm resulting from automatic renewals into new supplier contract terms and prices. The OCA's witness, Ms. Alexander, testified that FirstEnergy's residential shopping customers collectively paid 30% more than the PTC in every month from January 2022 through January 2026, or \$394.8 million in the aggregate. The OCA stated that these higher prices residential shopping customers have paid contributed to increased customer arrearages and increased uncollectible expenses, along with other affordability challenges for essential electric service. *Id.* at 37. The

OCA submitted that requiring affirmative customer action before a customer remains with an EGS following a fixed-term contract expiration ensures that customers knowingly choose to leave the protection of Commission-approved default service. *Id.* at 37-38. The OCA emphasized that default service is available to all residential customers and has consistently resulted in lower prices than those paid by shopping customers. *Id.* at 38.

CAUSE-PA also supported the proposal to amend the current procedures at the expiration of a fixed price contract. CAUSE-PA M.B. at 20. CAUSE-PA argued that the current process allowing suppliers to charge a different rate at the end of a contract term without obtaining informed consent is driving higher rates of termination and uncollectible expenses among residential shopping customers. In addition to the evidence discussed by FirstEnergy and the OCA, CAUSE-PA presented the following evidence of harm:

- Over a 100-month period, residential shopping customers were charged over \$888 million more than the applicable default service rate over a 100-month period, and confirmed low income shopping customers were charged disproportionately higher rates than other residential shopping customers.
- In 2025, residential shopping customers were terminated at rates as high as 22%, compared to just 3% for residential default service customers.
- In 2025, uncollectible expenses were between 2-3 times higher for residential shopping accounts compared to default service accounts.

CAUSE-PA R.B. at 17. CAUSE-PA averred that the proposed reforms in this case are “reasonable, narrow, and targeted” to resolve this demonstrated harm. CAUSE-PA M.B. at 22; CAUSE-PA R.B. at 31.

As a whole, the EGS Parties, Town Square/WGL, RESA, and Constellation argued that FirstEnergy's proposal to return customers to default service is inconsistent with the customer's right to choose an EGS and the competitive market framework under the Choice Act, the Commission's Regulations, and the Commission's *PECO DSP VI* and *PPL DSP V*²⁰ decisions, which require a showing of demonstrated harm to "bend" competition. These Parties submitted that returning customers to default service, without their affirmative action, amounts to "slamming," or the unauthorized switching of a customer's EGS. EGS Parties' M.B. at 6; Town Square/WGL M.B. at 21; RESA M.B. at 37-41; Constellation M.B. at 11. Town Square/WGL and RESA contended that a waiver of Section 54.10(3) is procedurally infirm, because that Section only applies to EGSs and not to EDCs. Town Square/WGL at 14; RESA M.B. at 34. The EGS Parties, Town Square/WGL, and Constellation averred that in order to legally implement this tariff modification, FirstEnergy should have sought to amend the Commission's Regulations through a statewide rulemaking instead of seeking a waiver in an individual DSP proceeding. EGS Parties' M.B. at 8; Town Square/WGL M.B. at 15-20.

Additionally, the EGS Parties argued that the record shows that the existing two-notice, disclosure framework in Section 54.10 is a reasonable, less-restrictive alternative to FirstEnergy's proposal, and none of the Parties identified a defect in the current two-notice process or why less restrictive measures like enhanced enforcement or disclosure were not considered. EGS Parties' R.B. at 6-7. Similarly, RESA argued that FirstEnergy did not analyze the broad impact this proposal would have on Pennsylvania's competitive market and believes that it should have considered whether less restrictive alternatives were available to address the asserted harms. RESA M.B. at 48-49. RESA and Constellation made a separate argument that the Company should also have requested a waiver of the Commission's requirements for changing a customer's EGS in

²⁰ *PPL Electric Utilities Corporation for Approval of Its Default Service Plan for the Period June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019356 (Opinion and Order entered December 17, 2020) (*PPL DSP V*).

52 Pa. Code Chapter 57, Subchapter M, on the basis that those switching rules do not permit FirstEnergy to return customers to default service when an EGS remains willing to serve and the customer has not authorized the switch. Constellation M.B. at 9; RESA M.B. at 40.

b. Recommended Decision

The ALJs determined that the Settlement's modification to the consequence of a residential shopping customer's inaction at contract expiration is a reasonable, narrowly targeted measure to address the harms established on the record while preserving customer choice and direct access to the retail market. R.D. at 199. Accordingly, the ALJs recommended that the Commission approve the proposal to return residential shopping customers to default service at contract expiration and the corresponding waiver of Section 54.10(3) of the Commission's Regulations, 52 Pa. Code § 54.10(3). *Id.* at 199-200.

The ALJs addressed the three main arguments the supplier intervenors raised, as follows: (1) returning customers to default service is inconsistent with the customer-choice principles and protections of the Choice Act (anti-slamming) and contrary to Commission Regulations (switching); (2) waiver of Section 54.10(3) of the Commission's Regulations, 52 Pa. Code § 54.10(3), is not appropriate because it does not govern the conduct of EDCs and because the request should be made in a statewide proceeding; and (3) the proposed change does not satisfy the test for restrictions on competition under the Choice Act, including the necessary showing of customer harm. The ALJs discussed each argument in detail, finding none of the arguments to be persuasive. R.D. at 195.

First, the ALJs determined that the proposal does not contravene customer choice. The ALJs explained that under FirstEnergy's proposal, when a customer does not

take action at contract expiration, the customer is informed of the result of that inaction – return to default supply service – in the original contract and the expiration notices. Accordingly, the ALJs concluded that this proposal is consistent with the Commission’s anti-slamming and switching protections. The ALJs disagreed with RESA, Town Square, WGL, the EGS Parties, and Constellation that changing the result of a customer’s inaction at the expiration of a supplier contract term restricts a customer’s ability to make shopping decisions or to choose an EGS. The ALJs reasoned that as they do now under the current process, customers would remain free to take action, whether they act to choose the same or a different product from their current EGS, enroll with another EGS, or return to the default service provider. R.D. at 196.

In resolving the supplier intervenors’ objection to a waiver of a regulation that applies to EGSs being approved in the context of a DSP proceeding, the ALJs found that the Company is also impacted by the current process based on the record evidence showing higher uncollectible expenses and increased service terminations for shopping customers, as well as a rising amount of customer complaints against EGSs in its service territory. The ALJs stated that the Company also needs a waiver to avoid a conflict between its Supplier Tariff provisions and Section 54.10(3). The ALJs reasoned that the requested waiver is limited to a narrow, specific subset of FirstEnergy shopping customers and that it is temporary, because it applies to the Company’s default service program beginning June 1, 2027 and ending May 31, 2031, and will be subject to review in the Company’s next DSP. The ALJs were similarly not persuaded by the arguments that a statewide proceeding was required, reasoning that default service proceedings, their retail programs, and supplier coordination tariffs are already EDC-specific. R.D. at 197. The ALJs concluded that a waiver was appropriate under Section 5.43 of the Commission’s Regulations, 52 Pa. Code § 5.43(a), noting that a Commission may waive its regulations under that Section if the waiver is in the public interest under the Commission’s statutory authority to rescind or modify regulations or orders and is

supported by facts to constitute the grounds requiring the regulation, amendment, waiver or repeal. R.D. at 197.

The ALJs stated that, as the Parties point out, an additional legal standard applies when there is substantial record evidence demonstrating that a change to a competitive market rule or program is anti-competitive and would restrict choice. R.D. at 197 (citing *Retail Energy Supply Association v. Pa. PUC*, 185 A.3d 1206 (Pa. Cmwlth. 2018) (*RESA 2018*); *CAUSE-PA 2015*). However, the ALJs reiterated that they did not find the return to default service proposal to be “anti-competitive,” as it would require customers to opt in to a contract with a supplier, rather than being required to opt out of an automatic contract renewal. R.D. at 197-98.

Nevertheless, the ALJs discussed the supplier intervenors’ contention that the proposal is inconsistent with appellate precedent because it would restrict competition without showing that: (1) an actual harm exists; and (2) the restriction is appropriate because no alternatives would adequately mitigate the harm. In doing so, the ALJs concluded that the proponents of the proposed changes to the Supplier Tariff established actual harm and that the record developed in this case includes the evidence the Commission identified as required to justify a waiver of Section 54.10(3) in the *PPL DSP V* and *PECO DSP VI* cases. R.D. at 198. The ALJs emphasized that the record evidence showed that FirstEnergy’s residential shopping customers paid \$888 million in aggregate net costs above the PTC since 2017 based on shopping data covering a 100-month period. *Id.* (citing *CAUSE-PA Exhs. 1 and 2*; *CAUSE-PA St. 1* at 9, 15-22, 25, 31; *CAUSE-PA St.1-R* at 5-7). The ALJs disagreed with the supplier intervenors that comparison to the PTC is not a meaningful or objective benchmark, reasoning that the PTC is meaningful because it is designed to be the least cost over time, rather than the lowest price. The ALJs observed that based on that PTC benchmark, the record in this case demonstrates that shopping customers who remain with suppliers following automatic contract renewals are paying significantly more than they would

have paid under default service. The ALJs also observed that the evidence shows that confirmed low-income shopping customers were charged disproportionately higher rates than the PTC, compared to residential shopping customers in the aggregate. R.D. at 198.

The ALJs contrasted this case to the evidence in the prior cases pertaining to public utility Standard Offer Program (SOP) cases, finding that the evidence here is specific to retail shopping customers targeted by the proposed Supplier Tariff changes. R.D. at 198. The ALJs concluded that the evidence in this case demonstrates a direct nexus between continual supplier pricing above the PTC and higher involuntary termination rates, higher uncollectible expenses, and rising customer complaints against EGSs in FirstEnergy's service territory. *Id.* at 198-99. The ALJs were persuaded that the Company's proposal for customers to default to default service at the expiration of fixed-term supplier contracts is a reasonable, narrowly tailored alternative to address the demonstrated harms under the existing renewal procedures. The ALJs found it significant that the Company demonstrated it 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, as well as collaborative review processes and customer education improvements the Company has conducted following approval of its *DSP VI*. *Id.* at 199.

Moreover, the ALJs did not find merit in the supplier intervenors' argument that the Settlement proposal would allow customers to be returned to default service even if the EGS' renewal offer is lower than the PTC. The ALJs concurred with FirstEnergy that this argument underscored that the purpose of the proposed change is to address unintended contract renewals by ensuring that customers make informed choices about their electric generation supply. The ALJs noted that if a customer's current EGS is offering a lower price, then the customer is free to choose to remain with that EGS. R.D. at 199.

c. Exceptions and Replies

(1) EGS Parties Exception No. 1

In their Exception No. 1, the EGS Parties make four arguments in support of their position that the ALJs erred as a matter of law and fact in approving FirstEnergy's proposal to revert customers to default service absent affirmative consent to remain with their chosen supplier. EGS Parties' Exc. at 3 (citing R.D. at 195-208; Conclusions of Law Nos. 41, 42, 43, 44, 45, 46; Findings of Fact Nos. 35, 36, 37). First, the EGS Parties argue that the customer's statutory right to choose a supplier is non-waivable, and the ALJs erred in treating FirstEnergy's request as a routine regulatory waiver. The EGS Parties contend that Section 54.10(3) of the Commission's Regulations, 52 Pa. Code § 54.10(3), implements an independent non-waivable statutory mandate set forth in Sections 2806(a) and 2807(d)(1) of the Code, 66 Pa.C.S. §§ 2806(a), 2807(d)(1), which provide that only customers may choose or consent to change their EGS. The EGS Parties state that while the Commission may waive a regulation under Section 5.43(a) of the Commission's Regulations, 66 Pa.C.S. § 5.43(a), the Commission may not waive a statute. EGS Parties' Exc. at 3. The EGS Parties aver that the Commission's Regulations limit it to waiving procedural defects when doing so "do[es] not affect the substantive rights of the party." *Id.* (citing *Info Connections, Inc. v. Pa. PUC*, 630 A.2d 498 (Pa. Cmwlth. 1993)). The EGS Parties submit that statutory construction supports their position and that the express terms of Section 2807(d)(1) state that "the Commission shall establish regulations to ensure that an electric distribution company does not change a customer's electric generation supplier without direct oral confirmation or written evidence of a customer's consent." EGS Parties' Exc. at 3-4 (citing 66 Pa.C.S. § 2807(d)(1)). The EGS Parties emphasize that the statute does not contain any exceptions to this language and the Commission cannot make a statutory exception that is not authorized in the statute. EGS Parties' Exc. at 4.

Second, the EGS Parties disagree with the ALJs' analysis that reverting customers to default service at the end of their contract term will not interfere with customer choice because the customer will be notified in the contract and in the contract expiration notices that inaction will result in reversion to default service, rather than an automatic renewal with their current EGS. The EGS Parties believe that switching a customer based on silence is not equivalent to the current practice of declining to switch a customer, based on the same silence, when the customer has affirmatively agreed to remain with the EGS until the customer chooses otherwise. The EGS Parties contend that advance notice of a switch is not the same as a customer's consent to that switch. EGS Parties' Exc. at 4. The EGS Parties assert that notice that a right will be removed is not an exercise of that right and does not equate to the affirmative choice the Code requires. *Id.* at 4-5.

Third, the EGS Parties argue that the ALJs' finding of harm is based on aggregate, retrospective PTC comparisons of \$888 million in above-PTC costs since 2017, and there is no record evidence that this harm resulted from any defect in the existing two-notice disclosure requirement. The EGS Parties point out that the costs may have also stemmed from customers making choices based on non-price attributes of their EGS product or receiving adequate but unheeded disclosures. EGS Parties' Exc. at 5. According to the EGS Parties, a Commission order that substitutes the amount of asserted harm for evidence that the challenged practice caused the asserted harm will not satisfy the substantial evidence standard upon judicial review. *Id.* (citing *PECO Energy Co. v. Pa. PUC*, 568 Pa. 39 (2002)).

Fourth, the EGS Parties argue that FirstEnergy's proposal is not narrowly tailored to the identified harm and is detrimentally, overly broad. The EGS Parties aver that the ALJs accept that customers will be reverted to default service even when their EGS renewal offer is priced below the PTC. As such, the EGS Parties believe that FirstEnergy's proposal is not narrowly tailored to address an affordability concern, but,

rather, extends beyond the concern it is intended to address because the proposal applies whether or not the customer is paying a greater amount than the PTC. EGS Parties' Exc. at 5.

(2) Town Square and WGL Exception No. 1

In their first Exception, Town Square/WGL contend, through two main arguments, that FirstEnergy's proposal cannot be approved because it is unlawful to modify existing Commission Regulations governing EGSs through a waiver request in an EDC default service proceeding. Town Square/WGL Exc. at 5. In their first argument, Town Square/WGL aver that FirstEnergy's waiver request is procedurally defective and unlawful. Town Square/WGL state that FirstEnergy's request is improper because it involves an EDC's request to waive an EGS contract renewal regulation at 52 Pa. Code § 54.10(3). Town Square/WGL state that Section 54.10(3) does not govern EDCs' actions, but, rather, it expressly governs only EGSs' actions and interactions with their customers. Town Square/WGL assert that FirstEnergy cannot seek a waiver from a regulation that does not apply to it. Town Square/WGL submit that the regulation does not mention EDCs or impose any obligations on EDCs, but instead, imposes detailed obligations on EGSs to provide specific notices to a customer before the expiration of a customer's retail supply contract. *Id.* at 6. Town Square/WGL point out that EGSs have previously only filed waiver petitions seeking to change regulations that apply to EGSs. *Id.* at 11. Town Square/WGL point out that the regulation concludes by providing direction to EGSs in instances when the customer does not respond to the expiration notices, and mandates that fixed duration contracts "shall be converted" to either month to month contracts or another fixed duration contract that permits cancellation at any time without a cancellation fee and "shall remain in place" until the customer chooses another option. *Id.* at 6-7.

Town Square/WGL additionally contend that FirstEnergy's proposal is not a waiver but is an amendment of Section 54.10(3) and, as such, must be accomplished through a formal rulemaking process to amend the regulation. Town Square/WGL Exc. at 7, 10, 11 (citing the Commonwealth Documents Law, 45 P.S. § 1102-1208; the Regulatory Review Act, 71 P.S. § 745.1, *et seq.*; the Commonwealth Attorneys Act, 71 P.S. § 732-101, *et seq.*; 1 Pa. Code § 7.1). Town Square/WGL explain that a petition for waiver is an ad hoc adjudicatory request for relief from the application of an existing regulation in a particular case under a specific set of circumstances that justify the requested relief. In contrast, Town Square/WGL explain that a request to amend or issue a regulation falls under the agency's legislative rulemaking authority to alter the regulation prospectively for all affected parties. Town Square/WGL aver that a rulemaking, rather than an ad hoc adjudication, is the preferred approach for an agency to create law and policy. *Id.* at 8 (citing Jim Rossi, *Making Policy Through the Waiver of Regulations at the Federal Energy Regulatory Commission*, 45 Admin Law. Rev. 255, at 259, 275-277 (1995)). Town Square/WGL believe that FirstEnergy's proposal is seeking long-term modification of a regulation and not a temporary excusal from the regulation. Town Square/WGL submit that the ALJs improperly characterized the Commission's EGS contract renewal regulation as a standard component of an EDC default service plan when the regulation is a formally promulgated and legally binding rule that applies statewide. Accordingly, Town Square/WGL argue that FirstEnergy should have followed the process for filing a petition for amendment under Section 5.43(a) of the Commission's Regulations, 52 Pa. Code § 5.43(a). WGL/Town Square Exc. at 9.

In their second argument, Town Square/WGL aver that FirstEnergy's waiver request should not be approved because it is not narrow in scope or temporary in nature as set forth in prior Commission decisions. Town Square/WGL Exc. at 12. They state that the ALJs incorrectly concluded that FirstEnergy's proposal is "temporary in nature" because it lasts for the entire four-year duration of FirstEnergy's default service

program from June 1, 2027 to May 31, 2031. Town Square/WGL also disagree that FirstEnergy's proposal is "narrowly crafted," because it will impact all EGSs operating in FirstEnergy's service territory as well as the potential customers of those EGSs.

Town Square/WGL submit that neither the ALJs nor the Parties identify any instances in which the Commission granted a waiver of a regulation that was as broad and as long as the waiver FirstEnergy is requesting. *Id.* at 13. Town Square/WGL distinguish this case from the *Duquesne Light*²¹ case that CAUSE-PA has relied on in support of its arguments on the basis that Duquesne requested a waiver of a regulation that governed EDCs and the waiver was a one-month temporary waiver supported by legal and factual justification. *Id.* at 14-15.

(3) RESA Exception Nos. 1 through 4

In its first Exception, RESA contends that the ALJs erred in failing to apply the Competition Act's framework governing competitive generation prices and restrictions on the competitive market based on three arguments. First, RESA argues that the Commission may not regulate competitive generation prices and must rely on competition, not economic regulation, to dictate generation costs. RESA Exc. at 6. RESA states that in implementing the Choice Act, the Commission explained that it may not control the pricing in a competitive market. *Id.* (citing *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa.C.S. § 2807(e)(2)*, Docket No. L-00040169, at 5-7, 33-34 (Final Rulemaking Order entered May 10, 2007)). RESA believes that the ALJs are improperly dictating pricing in this case. RESA avers that the ALJs' justifications for the challenged retail restrictions is above-PTC pricing. RESA objects to Conclusion of

²¹ *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 December 4, 2014) (*Duquesne Light*).

Law No. 42²² on the basis that it finds that the affirmative-consent and POR restrictions are “necessary to address the harms associated with above-PTC supplier pricing.” RESA Exc. at 6-7. RESA submits that implementing a restriction for the purpose of regulating the price of generation is inconsistent with the Competition Act. *Id.* at 7.

Second, RESA argues that the Choice Act requires the Commission to preserve customer choice in the competitive market and not just the right to shop. RESA cites to Sections 2804(2), 2806(a), and 2807(d)(1) of the Code²³ in support of its argument that the customer has the right to choose its generation supplier. RESA Exc.

²² See R.D. at 246.

²³ Section 2804(2) provides the following, in relevant part:
... Customers should be able to choose among alternatives such as firm and interruptible service, flexible pricing and alternate generation sources, including reasonable and fair opportunities to self-generate and interconnect. These alternatives may be provided by different electric generation suppliers.

66 Pa.C.S. § 2804(2).

Section 2806(a) states as follows, in pertinent part:

... As of January 1, 2001, consistent with the commission’s discretion under this section, all customers of electric distribution companies in this Commonwealth shall have the opportunity to purchase electricity from their choice of electric generation suppliers. The ultimate choice of the electric generation supplier is to rest with the consumer.

66 Pa.C.S. § 2806(a).

Section 2807(d)(1) provides the following, in relevant part: “The commission shall establish regulations to ensure that an electric distribution company does not change a customer’s electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier.” 66 Pa.C.S. § 2807(d)(1).

at 8-9. RESA observes that a customer exercises that statutory right by selecting an EGS through the Commission-regulated enrollment process and entering into a contract with an EGS whose disclosures, expiration notices, and renewal provisions are governed by the Commission's Regulations. RESA also observes that after an EGS sends a customer the required expiration and renewal notices, the EGS and customer relationship continues unless the customer chooses otherwise. RESA contends that approval of the Settlement disregards the customer's statutory right to choose an EGS and substitutes EDC-provided default service for the chosen EGS based simply on the customer's inaction. *Id.* at 9 (citing 52 Pa. Code §§ 54.5, 54.10, 111.7). RESA states that the Commission recently found that authorizing a supplier change without advance customer consent would violate Section 2807(d)(1) of the Code and fall outside of the Commission's authority. *Id.* at 10 (citing *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-2024-3049623 (Opinion and Order entered August 14, 2025) (*Community Choice Aggregation*)). RESA concludes that the ALJs' finding that FirstEnergy's proposal is not "slamming" is inconsistent with Section 2807(d)(1) and the Commission's switching rules in 52 Pa. Code Chapter 57, which excuse the supplier-change procedures only when the customer's EGS discontinues service and other EGSs are not willing to serve the customer. RESA Exc. at 10.

RESA believes that the procedural method of accomplishing FirstEnergy's proposal to revert customers to default service following contract expiration poses an additional problem. RESA contends that the ALJs have not resolved its objection to the Commission using a utility-specific default service proceeding to change the result of customer inaction that was established through a statewide rulemaking and, consequently, change the retail market rights and obligations of EGSs. RESA maintains that granting a waiver in this case raises procedural due process and other constitutional concerns, and RESA preserves its objections. RESA Exc. at 10.

RESA avers that in addition to interfering with the customer's right to choose, neither the parties to the Settlement nor the ALJs have provided any analysis of how the proposed restrictions would impact the viability of the competitive market. RESA asserts that Section 2811 of the Code requires the Commission to monitor the retail electricity market and to investigate impacts on the "proper functioning of a fully competitive retail electricity market." RESA Exc. at 11. RESA believes that in reaching a decision on the Settlement, the ALJs failed to consider the evidence RESA presented about the practical market effects of the restrictions in this case, including evidence concerning the questions the Commission's prior market investigations considered: "whether suppliers will continue to participate, what products will remain available, what barriers the restrictions create, and whether customers will retain meaningful competitive options." *Id.* at 11-12 (citing *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952, at 2, 5 (Order entered April 29, 2011)).

Third, RESA argues that the Commission cannot restrict competition unless the evidentiary burden established by the Commonwealth Court is satisfied. RESA Exc. at 12 (citing *CAUSE-PA*; *RESA*). RESA notes that Conclusion of Law No. 42 states that the affirmative consent and POR restrictions are "necessary," and Conclusion of Law No. 45²⁴ states that competition may bend, but RESA contends that those conclusions alone do not satisfy the required evidentiary showing. RESA avers that the record does not support a finding that EGS pricing is causing harm that would allow competition to "bend" based on the applicable appellate precedents. RESA Exc. at 12. RESA states that in those cases, the Commission had concluded that customers receiving subsidized CAP benefits should not impose higher program costs on other ratepayers by choosing higher-priced competitive supply. RESA also states that the Commission was reconciling competition with a separate statutory obligation in those cases, whereas in this case, the proposed restrictions apply broadly to retail shopping based on what RESA characterizes

²⁴ See R.D. at 246.

as general affordability concerns. RESA contends that FirstEnergy's pricing, termination, uncollectible expense, and complaint data does not establish a direct link between EGS pricing and customer harm or that the challenged restrictions are necessary to address such harm. *Id.* at 13.

RESA also argues that the restrictions in the Settlement are broad and not similar in scope to the narrow statutory context in the applicable appellate cases involving CAP. RESA avers that the restrictions here are not tied to a discrete subsidized program and a separate statutory universal-service mandate; rather, the restrictions are broad, structural restrictions on competitive participation. RESA states that the restrictions apply to residential shopping customers generally: "EDC-provided default service is substituted for a customer's chosen EGS at fixed-term contract expiration absent renewed action; variable-price customers must reconfirm their competitive choice every ninety days; and the POR restriction extends to commercial customers as well." RESA asserts that the Competition Act does not allow such broad restrictions. RESA Exc. at 14.

In its Exception No. 2, RESA avers, based on three arguments, that the ALJs erred by treating the continued technical ability of retail choice as sufficient without evaluating whether the Settlement's restrictions will preserve a functioning competitive market. RESA Exc. at 14 (citing FOF Nos. 91-92, 99, 105; COL Nos. 35, 41-42, 45; R.D. at 168-69, 198-204, 227-229; Ordering ¶¶ 1, 4, 8, 9.) First, RESA argues that the ALJs applied the incorrect standard of whether competition is preserved. RESA contends that each challenged retail provision moves customers away from competitive supply and toward EDC-provided default service, and the ALJs did not evaluate how those

provisions impact the functioning competitive market when they operate together. RESA Exc. at 14. RESA provides the following examples in support of its argument:

Automatic return substitutes EDC provided default service for the customer's chosen EGS when the customer does not act at contract expiration. Quarterly affirmation creates a recurring opportunity for the same result. The CRP – a Commission-approved program designed to introduce default-service customers to competitive supply at a guaranteed discount – is eliminated. And access to POR, a market mechanism upon which no residential or small commercial EGS in FirstEnergy's territory currently operates without, becomes conditioned upon supplier price and billing methodology.

Id. at 14-15. RESA states that the ALJs address these concerns by concluding that shopping remains available because customers affected by automatic return are “free to take action” to stay with an EGS; CRP elimination leaves customers free to shop independently; and suppliers restricted from POR remain free to charge above the PTC and operate without POR. RESA submits that the ALJs' analysis does not answer the question of whether a functioning competitive market will remain. *Id.* at 15. RESA explains that the Commission is required to examine the retail market structure under the Choice Act, and the Commission has historically done so, including in its statewide Retail Markets Investigation. *Id.* at 16.

Second, RESA argues that the ALJs do not evaluate the practical, competitive effects of the challenged restrictions. RESA avers that POR is the best example of this issue because none of the EGSs currently offering residential products in FirstEnergy's service territory do so without POR, which allows suppliers to compete on price and product innovation rather than financing bad debt and managing collections. RESA Exc. at 16. RESA contends that the ALJs did not address RESA's concerns about the market, including the potential impacts on supplier participation, product availability, innovation, and meaningful customer choice when access to POR is conditioned on

supplier price and billing methodology. *Id.* at 17. Similarly, RESA avers that the ALJs did not evaluate how transferring EGS customers to EDC default service at contract expiration will affect competitive market participation. *Id.* at 17-18. Moreover, RESA avers that in approving the Settlement’s quarterly affirmation and CRP elimination provisions, the ALJs did not address the cumulative market effect of requiring repeated affirmative action only for competitive service while simultaneously eliminating a Commission-approved pathway from default service to competitive supply. *Id.* at 18.

Third, RESA argues that Maryland’s experience in making changes in the retail market demonstrates why preserving the legal right to shop does not answer RESA’s concern about what restrictions may do to the market. RESA Exc. at 19, 20. RESA explains that after Maryland adopted various retail market restrictions, similar to those proposed here, residential shopping participation decreased from approximately 12.8% to 0.3% statewide and to 0.2% in FirstEnergy’s Potomac Edison territory. RESA Exc. at 19 (citing RESA St. 1-SR at 8-9, 13-15). RESA avers that the ALJs had concrete evidence before them concerning the practical effects of market restrictions, yet disposed of the competitive-market concerns mainly by finding that customers and suppliers remain legally able to participate and that consumer protection rationales support the individual restrictions. RESA Exc. at 20.

In its Exception No 3, RESA contends, based on two arguments, that the ALJs erred in approving restrictions on competition without the required showing that no reasonable, less restrictive alternative would adequately address any harm demonstrated on the record. RESA Exc. at 21 (citing FOF Nos. 87-89, 98-99, 103-05; COL Nos. 27, 34, 42, 46; R.D. at 162-63, 198-200, 208-09, 227-29; Ordering ¶¶ 1, 4, 8-9). RESA avers that while Conclusion of Law No. 46²⁵ states that “no reasonable alternative exists,” this statement is not supported in the Recommended Decision. RESA Exc. at 21. RESA

²⁵ See R.D. at 246.

asserts that the ALJs did not establish that the particular restrictions are necessary or that less restrictive alternatives are inadequate. *Id.* at 21-22.

First, RESA argues that the ALJs did not establish the required nexus between the asserted harms and the scope of the restrictions. With respect to the automatic transfer of EGS customers to EDC default service at contract expiration, RESA states that the record does not establish that reasonable alternatives directed to the contract renewal concern were evaluated and found to be inadequate. RESA finds it significant that an EGS customer will be moved to default service upon contract expiration even when the EGS' contract renewal price is below the PTC. RESA believes that such a restriction, that is based on concerns about above-PTC pricing but operates when the contract renewal price is lower than the PTC, is not narrowly tailored. RESA Exc. at 22.

Second, RESA argues that the ALJs improperly shifted to RESA the proponents' burden of proving that no reasonable alternative exists to address the asserted concerns. RESA contends that the ALJs misconstrued the purpose of RESA's alternatives evidence in a manner that shifts the burden of proof to RESA. RESA cites to Conclusion of Law No. 27²⁶ as treating RESA's discussion of potential market-design improvements as if RESA proposed a replacement market design and, therefore, had the burden of proving its benefits. RESA also notes that in Conclusion of Law No. 34,²⁷ the ALJs similarly concluded that RESA failed to "establish[] a basis" for a successor CRP or further collaborative consideration.²⁸ RESA explains that it provided those alternatives to demonstrate that the proponents had not established the absence of reasonable approaches preserving competition and not as affirmative proposals. RESA

²⁶ See R.D. at 243.

²⁷ See *Id.* at 244.

²⁸ RESA's arguments on the burden of proof are addressed in great detail in our disposition, above, relating to the Company's CRP.

submits that it did not have an affirmative burden to establish that a particular alternative should be adopted, but, rather, the proponents bore the burden of establishing that no reasonable alternative would adequately address the demonstrated harm. RESA Exc. at 27.

In its Exception No. 4, RESA argues that the ALJs erred in treating pricing, termination, uncollectible, complaint, and related data as sufficient to establish the harm necessary to justify the challenged proposals. RESA Exc. at 28 (citing FOF Nos. 85-89, 98-100, 103-05; COL Nos. 34, 42, 45-46; R.D. at 162-63, 198-200, 227-29; Ordering ¶¶ 1, 4, 8-9). RESA asserts that the ALJs went beyond a finding supported by the record in finding a “direct nexus” between continual above-PTC supplier pricing and higher termination rates, uncollectible expense, and complaints and improperly relied on that finding in approving the challenged restrictions. *Id.* at 28-29. RESA argues that the individual datasets measure different things, and the proponents’ characterization of the observed relationships does not supply the causal analysis necessary to connect them. *Id.* at 29.

Concerning the uncollectibles data, RESA avers that selecting particular metrics and observing correlations among them does not, by itself, establish that above-PTC EGS pricing causes the customer outcomes attributed to it. RESA observes that the ALJs rely on disparities between shopping and default-service customers and on the allocation of generation-related uncollectible expense to purchased EGS receivables. RESA, however, criticizes this data on the basis that RESA demonstrated that FirstEnergy’s generation-related uncollectible figures include accounting allocations based on billed revenues, rather than actual supplier specific write-offs, and that FirstEnergy maintains different customer-payment datasets measuring different things. RESA Exc. at 30. RESA believes that the complaint data illustrates a similar causation problem. RESA notes that the ALJs relied on FirstEnergy’s report that formal and informal complaints “related to competition issues, including slamming and high EGS

prices” increased approximately 50% from 2024 to 2025, and the proponents use that increase as evidence of shopping-related harm.” *Id.* at 31 (citing FirstEnergy St. 1 at 22). RESA contends that, to the contrary, the record does not identify what portion of the increase involved high EGS prices rather than slamming or other competition issues and does establish that above-PTC pricing caused the increase. RESA Exc. at 31.

Similarly, RESA argues that the termination data presents the same problem. RESA states that the ALJs relied on evidence that shopping customers were terminated at higher rates than default-service customers, including rates as high as 22% for shopping customers compared to 3% for default service customers. RESA’s preserved objection is that the proponents did not supply the analysis necessary to move from observed correlations among selected metrics to the causal conclusion attributed to them. RESA Exc. at 31. RESA avers that while the termination figures establish an observed difference between customer populations, they do not establish why that difference exists or that above-PTC EGS pricing caused the difference. RESA believes that the ALJs also erred by accepting the proponents’ argument that this evidence distinguishes *PECO DSP VI* and *PPL DSP V* because in those decisions, the Commission found that evidence of resulting customer harm was absent from the evidentiary records. RESA asserts that the ALJs improperly treated the observed disparities as supplying the substantial evidence missing from the records in those prior cases without first establishing the causal connections upon which those disparities are relied upon, noting that *PPL DSP V* contemplated future evidence demonstrating harm and not automatic acceptance of particular categories of data as proof of harm. *Id.* at 32. According to RESA, the Commission must determine what the data establishes, whether substantial evidence supports the causal inferences drawn from the data, and whether any demonstrated harm supports the regulatory response set forth in the Settlement. *Id.* at 33.

(4) Constellation Exception Nos. 1 through 4

In its Exception No. 1, Constellation maintains that the ALJs erred in finding that the return to default service proposal preserves customer choice. Constellation Exc. at 2 (citing R.D. at 196-200; FOF Nos. 92, 98-99; COL Nos. 41, 42, 45; Ordering ¶¶ 1, 4, 8-9). Constellation avers that when a customer has exercised the statutory right to choose an EGS, they cannot have that choice removed without authorizing a supplier change. *Id.* at 3 (citing 66 Pa.C.S. §§ 2804(2), 2806(a)). Constellation submits that under the Commission's existing regulatory framework, once a customer is enrolled with an EGS, the customer receives disclosures, expiration notices, and renewal notices. Constellation argues that under FirstEnergy's proposal, the customer's existing supplier relationship is not honored, and the customer's silence is treated as authorization to end the relationship and return the customer to default service. Constellation believes such an outcome is inconsistent with the Choice Act. Constellation Exc. at 3.

In its Exception No. 2, Constellation argues that the ALJs erred in concluding that automatic return to default service preserves customer choice. Constellation Exc. at 3 (citing R.D. at 196-97; FOF Nos. 92, 98-99; COL Nos. 41-42; Ordering ¶¶ 1, 4, 8-9). Constellation contends that this proposal conflicts with the supplier-switching protections set forth in Section 2807(d)(1) of the Code, 66 Pa.C.S. § 2807(d)(1), which requires a customer's direct authorization to be switched from one supplier to another. Constellation Exc. at 3. Constellation characterizes a change from receiving generation service from an EGS to receiving generation service through utility default service as a change in supplier. Constellation submits that while the ALJs emphasized customer notice, providing notice that a supplier change will occur absent customer action is materially different from obtaining customer authorization for the supplier change. *Id.* at 4. Constellation asserts that Pennsylvania law requires customer consent. *Id.* (citing *Community Choice Aggregation*).

In its Exception No. 3, Constellation contends that the ALJs erred in recommending that the Commission grant a waiver of 52 Pa. Code § 54.10(3). Constellation Exc. at 4 (citing R.D. at 197-200, 205; FOF Nos. 92, 98-99; COL Nos. 42, 46; Ordering ¶¶ 1, 4, 8-9). Constellation states that the Commission should deny the requested waiver because it improperly rewrites a statewide regulation through a utility-specific proceeding. Constellation Exc. at 4. Constellation argues that by approving the waiver, the ALJs have fundamentally altered the statewide framework. Constellation submits that instead of preserving a customer's existing supplier relationship following proper notice, the proposal adopts a different rule that applies only in FirstEnergy's territory. Constellation believes that this will result in unnecessary inconsistency and increased administrative complexity. *Id.* at 5.

In its Exception No. 4, Constellation contends that the ALJs erred in finding that the record demonstrates customer harm caused by the existing renewal framework. Constellation Exc. at 5 (citing R.D. at 198-200; FOF Nos. 90, 93-99; COL Nos. 42, 45-46; Ordering ¶¶ 1, 4, 8-9). Constellation observes that the ALJs rely on evidence, including prices above the PTC, termination rates, arrearages, uncollectibles, and complaints. Constellation states that even if the data accurately reflects the identified outcomes, the record does not show that Pennsylvania's existing renewal framework or Section 54.10(3) caused those outcomes. Constellation Exc. at 5. Constellation additionally believes that the record does not establish that automatic return to default service would resolve the asserted harms, particularly because the proposal applies even when an EGS offers a renewal price below the PTC. *Id.* at 5-6.

(5) FirstEnergy Replies

In its Replies to Exceptions, FirstEnergy argues that the ALJs properly rejected the Non-Settling Parties' objections to the Settlement's supplier coordination tariff changes related to EGS arrangements with residential customers and FirstEnergy's

POR program. FirstEnergy R. Exc. at 12. First, FirstEnergy argues that the Settlement's supplier tariff changes are necessary to mitigate the harm arising from the current procedures governing EGS contracts with FirstEnergy residential customers and unlimited access to POR. FirstEnergy distinguishes the facts in this case from those in the *PPL DSP V* and *PECO DSP VI* cases. *Id.* at 13. FirstEnergy explains that the record in this case contains substantial evidence of pervasive harm to FirstEnergy residential shopping customers and other customers that directly correlates with residential shopping customers overpaying for generation supply, including the types of harm the Commission found were not established in *PPL DSP V* and *PECO DSP VI*. *Id.* at 13-14. FirstEnergy states that its Pennsylvania residential shopping customers paid \$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. *Id.* at 14.

FirstEnergy avers that the evidence in this proceeding also demonstrates the following:

- Service termination rates for FirstEnergy residential shopping customers are up to ten times higher than residential default service customers.
- Involuntary termination rates in 2025 ranged between 14-22% for residential shopping customers compared to just 1-3% for residential default service customers.
- 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.
- The uncollectible expense per FirstEnergy residential shopping customer was \$22.83, or almost three times more than the uncollectible expense per residential default service customer (\$7.82).

- 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.
- Complaints involving EGSs in 2025 were 50% higher than in 2024.⁵

FirstEnergy R. Exc. at 14. FirstEnergy argues that unlike the EDCs in *PPL DSP V* and *PECO DSP VI*, FirstEnergy already pursued “less restrictive” alternatives to try to address the harms to FirstEnergy customers stemming from high EGS prices, including POR clawback charges based on a screening test to help recover some of the uncollectible amounts from EGSs who failed the screening test. *Id.* at 15.

Second, FirstEnergy argues that its Supplier Tariff changes do not invalidate customer choice or regulate EGS prices in violation of the Choice Act. FirstEnergy R. Exc. at 15. FirstEnergy states that EGSs will be able to continue offering any pricing, contract duration, and non-price attributes, including renewable energy or long-term price stability, as they currently do. *Id.* at 15-16 (citing FirstEnergy St. 1-R at 13). FirstEnergy avers that the record does not support the Supplier Intervenors' contentions that FirstEnergy customers are paying higher prices for value-added products. FirstEnergy R. Exc. at 16. FirstEnergy emphasizes that as the ALJs explained, the Settlement provides that customers will continue to be informed of the result of inaction through the terms of the EGS contracts they have signed up for and the required expiration notices. *Id.* at 17.

Accordingly, FirstEnergy submits that the affirmative customer consent requirements in the Settlement do not force residential shopping customers to return to default service as RESA, Constellation, the EGS Parties, and Town Square/WGL contend. Rather, FirstEnergy states that customers would be 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. *Id.* at 16. FirstEnergy notes that the Commission’s recent decision on borough community aggregation is distinguishable because the boroughs proposed to transfer residents and small businesses to community aggregation supply without advance consent. *Id.* at 17 (citing *Community Choice Aggregation*). FirstEnergy asserts that the evidence in this case demonstrates that its Supplier Tariff changes address the harms from residential customers unknowingly paying prices above the PTC and enhance customer choice by allowing customers to evaluate and make an informed decision on changing EGS contract terms and prices before re-enrolling with a supplier. FirstEnergy R. Exc. at 17.

Third, FirstEnergy avers that the waiver the Joint Petitioners request to implement the Settlement’s affirmative consent requirements is appropriate and in the public interest. FirstEnergy states that affordability is a concern under the automatic renewal, with customer opt-out, practice permitted in Section 54.10(3) of the Commission’s Regulations, 52 Pa. Code § 54.10(3). FirstEnergy R. Exc. at 17. FirstEnergy submits that under the current practice if a customer does not respond to the required EGS notices, EGSs 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. FirstEnergy also submits that 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. *Id.* at 18 (citing FirstEnergy St. 1 at 22-23).

In response to the arguments that a waiver would constitute a permanent change to Section 54.10, which was promulgated in 2014 through a formal rulemaking

process,²⁹ FirstEnergy argues that the waiver would be temporary in nature because it will expire at the end of its DSP VII. FirstEnergy R. Exc. at 18. FirstEnergy observes that since the 2014 rulemaking, the Commonwealth Court has decided that the Competition Act was not intended to create “unbridled competition” and restrictions may be necessary to address customer harms. *Id.* (citing *CAUSE-PA 2015*, 120 A.3d at 1101). FirstEnergy asserts that a waiver of Section 54.10’s automatic renewal requirements during DSP VII for its residential customers is appropriate to address the higher uncollectible expense and termination activity associated with FirstEnergy shopping accounts that has continued for nearly a decade, even after the adoption of FirstEnergy’s POR clawback mechanism. FirstEnergy R. Exc. at 19.

FirstEnergy also disagrees with the arguments that it is improper to consider a waiver and the affirmative consent requirements outside of a statewide proceeding, noting that the Commission has addressed retail market issues and non-procurement issues that EGSs have themselves raised in EDC-specific default service proceedings. FirstEnergy R. Exc. at 19. FirstEnergy points out that supplier coordination tariffs are EDC-specific and EGSs operate among various utilities in Pennsylvania and other states that have different retail shopping requirements. *Id.* (citing *PPL DSP V*).

(6) The OCA’s Replies

In its Replies to Exceptions, the OCA avers that the Choice Act does not prohibit the adoption of the ALJs’ recommendations to approve the Settlement proposals. OCA R. Exc. at 1. The OCA argues that RESA’s position incorrectly equates regulating competitive generation prices and regulating the structure through which default service is procured and administered. The OCA submits that the Recommended Decision does

²⁹ See *Final Rulemaking Order, Revision of the Electric Generation Customer Choice Disclosure Statement Regulations*, Docket No. L-2012-2317273 (Order entered December 18, 2014).

not set a price ceiling for EGSs, prevent EGSs from offering prices above the PTC, prevent customers from selecting an EGS, or restrict EGSs from competing for customers. Rather, the OCA states that the ALJs' recommendations modify FirstEnergy's default service procurement structure and establish consumer protections for residential shopping customers. *Id.* at 2. The OCA explains that this is within the Commission's authority under 66 Pa.C.S. §§ 2803(4), 2807(e)(3.2), and 2807(e)(3.3). The OCA asserts that the ALJs properly concluded that the Settlement provisions maintain a customer's ability to choose an EGS, while also addressing the demonstrated harms associated with automatic renewal and customer inaction. According to the OCA, while the Choice Act requires the Commission to preserve competitive markets and customer choice, it does not require the Commission to treat silence, or inaction, as affirmative consent. *Id.* at 3.

The OCA argues that adoption of the Settlement provisions maintains informed customer choice while addressing problems within the current market mechanisms. The OCA cites to *RESA 2018*, stating that the Court in that case reasoned that a change in the default treatment of customers did not violate the Choice Act when customers retained meaningful options to select an EGS or return to default service. The OCA emphasizes that, here, the ALJs acknowledged that the change would affect the competitive market by requiring customers to affirmatively elect continued EGS service, but determined that this was not an impermissible restriction on competition because customers remain free to choose their existing EGS, select a different EGS or product, or return to default service. OCA R. Exc. at 3.

The OCA disagrees with several of the following arguments Constellation, RESA, the EGS Parties, and Town Square/WGL raise in their Exceptions concerning the proposal to return customers to default service: (1) that the proposal violates the Choice Act's customer-choice and anti-slamming protections; (2) that the proposal improperly changes a customer's supplier without authorization, (3) that the proposal is an

impermissible waiver of Section 54.10(3); and (4) that the proposal is unsupported by substantial evidence because the record does not demonstrate that automatic renewals caused the customer harms presented by the Settling Parties. The OCA avers that the ALJs properly rejected these arguments, reasoning that because the Settlement allows residential customers to shop and to choose their supplier, it does not reduce competition. Rather, the OCA states that the proposal simply changes the consequence of inaction at the expiration of a fixed-term contract into one that is more beneficial to customers. OCA R. Exc. at 16.

The OCA avers that unlike the record in prior cases in which similar proposals were addressed, the ALJs correctly found that FirstEnergy presented substantial evidence showing the adverse outcomes for residential shopping customers. The OCA explains that:

The record shows that residential shopping customers paid more than \$888 million above the applicable PTC from August 2017 through December 2025, including approximately \$82 million in 2025 alone. In 2025, termination rates for residential shopping customers ranged from 14 percent to 22 percent across FE PA's four divisions, compared to approximately 1 percent to 3 percent for residential default-service customers. Shopping customers also experienced 2-3 times higher uncollectable expense than default service customers in 2025.

OCA R. Exc. at 16-17. The OCA asserts that the evidence in this case is significant because the Commission has previously stated that evidence of increased complaints, payment-troubled customers, collection activity, service terminations, and uncollectible expense could justify a waiver of Section 54.10(3). The OCA believes that the ALJs properly recognized that the Settling Parties have now developed the type of record that was absent in *PPL DSP V* and *PECO DSP VI*. *Id.* at 17.

The OCA continues that the record developed in this case supports that FirstEnergy, DSP-specific relief, rather than a statewide proceeding or rulemaking, is appropriate because the evidence supporting the change is specific to FirstEnergy's service territory, and default service proceedings are utility-specific proceedings addressing utility-specific retail programs and Supplier Coordination Tariffs. The OCA observes that the Commission has previously considered supplier coordination mechanisms, POR provisions, and other retail-market issues in individual DSP proceedings. OCA R. Exc. at 17. The OCA asserts that a waiver under Section 5.43(a) of the Commission's Regulations, 52 Pa. Code § 5.43(a), is warranted and in the public interest here because the waiver is necessary to implement the Settlement's Supplier Tariff provisions and is supported by evidence of customer harm specific to FirstEnergy's service territory. *Id.* at 17-18.

Moreover, the OCA contends that FirstEnergy first considered less restrictive measures before it proposed the automatic return to default service. The OCA points out FirstEnergy's existing POR clawback mechanism, collaborative review processes, and customer education efforts undertaken following *FirstEnergy DSP VI*, averring that those measures did not eliminate the identified problems. The OCA submits that the Settlement is a reasonable next step that directly addresses the harms associated with customers remaining on competitive supply when they did not act before the expiration of the EGSs' fixed-term contracts. OCA R. Exc. at 18; *see also* OCA R. Exc. at 23-24.

(7) CAUSE-PA Replies

In its Replies to Exceptions, CAUSE-PA argues that the Choice Act permits competition to bend to protect customers and, accordingly, supports the reforms in the Settlement. CAUSE-PA R. Exc. at 2. CAUSE-PA states that the supplier intervenors raise broad arguments that would isolate competition from the overall intent

and purpose of the Act. CAUSE-PA cites to *CAUSE-PA 2015* in support of its argument that the Choice Act does not mandate “unbridled competition,” but, rather, permits competition to “bend” to address important public concerns, including the consumer protection provisions in the Choice Act and the Code generally. *Id.* at 2-3 (citing *CAUSE-PA 2015* at 1101). CAUSE-PA avers that the reforms in the Settlement in this case meet the standards set forth in *RESA 2018*, which allow a restriction on competition when there is harm associated with competition, and there is no reasonable alternative on the record that can address the harm. *Id.* at 3.

As an initial matter, CAUSE-PA states that the Settlement provisions are not anti-competitive, but, instead, will strengthen the competitive market by restoring trust and accountability in the marketplace and eliminating supplier subsidies that residential customers pay for in the form of higher uncollectible expenses. CAUSE-PA submits that under each proposal, customers will continue to have direct access to the market and be free to choose any supplier product without restriction. Accordingly, CAUSE-PA argues that the Commission is not required to consider less restrictive proposals, and the Commission must only ensure the proposals are just, reasonable, and supported by substantial evidence. CAUSE-PA R. Exc. at 3. CAUSE-PA avers that even if the proposals were found to pose a potential restraint on competition, there is substantial evidence to support each proposal in this case, and the supplier intervenors do not identify any concrete, implementable alternatives capable of addressing the documented harm. *Id.* at 3-4. CAUSE-PA contends that despite RESA’s contrary arguments, there is no requirement that the Commission evaluate the potential existence of other alternatives that are not part of the record. *Id.* at 4.

CAUSE-PA argues that, for five specific reasons, the proposed end-of-contract procedures requiring affirmative consent are necessary and lawful customer protection, narrowly tailored to address concrete evidence of harm. First, CAUSE-PA argues that the ALJs properly characterize affirmative consent, not simply inaction, as the

correct measure of customer choice. CAUSE-PA R. Exc. at 5. CAUSE-PA explains that the language in the Competition Act supports its position:

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.’ 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.’

Id. at 5-6 (citing 66 Pa.C.S. §§ 2802(9)-(10), 2803, 2804(9), 2807(d), 2809(e)).

CAUSE-PA clarifies that the Settlement does not negate customer choice at the end of a contract term, rather, it addresses what happens when a customer does not make a choice at the end of a contract term. CAUSE-PA asserts that under the current process, an EGS may continue charging a customer new or changed rates after the expiration of a fixed contract, based merely on the customer’s inaction. CAUSE-PA explains that when a customer consents to a new contract, they do not know what the price will be at the end of their contract term, and the written disclosure in the contract does not equate to affirmative choice or consent. CAUSE-PA R. Exc. at 6.

CAUSE-PA continues that 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). CAUSE-PA states that Section 2807(d)(1) only requires oral confirmation or written evidence of the customer’s consent and only applies to EDCs. Additionally, CAUSE-PA asserts, the Settlement provisions do not move a customer from one competitive supplier to another. CAUSE-PA R. Exc. at 7. CAUSE-PA explains that default service is the “statutory backstop” for a customer that has not selected a competitive product, and it is not a

supplier-offered service. CAUSE-PA asserts that a customer's choice is at the forefront of the Settlement, because the customer may affirmatively remain with the same EGS, select a different EGS, or receive default service. *Id.* at 8.

Second, CAUSE-PA argues that the ALJs' decision is supported by record evidence establishing a direct causal link between high supplier pricing, high terminations, high uncollectible expenses, and a lack of informed customer consent. CAUSE-PA R. Exc. at 8. CAUSE-PA describes the evidence, in detail, as follows:

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. The magnitude and persistence of the pricing evidence is striking: Residential shopping customers were charged, in the aggregate more than the default service price every month for a 100-month period, resulting in more than \$888 million in aggregate excess charges. 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.

Id. at 9. CAUSE-PA points out that higher prices increase the risk of service termination and fall within the Commission's statutory obligations under the Choice Act to maintain customer protections, service quality, universal service, and just and reasonable service. *Id.*

CAUSE-PA avers that the uncollectible expense evidence also supports the ALJs' decision, as well as a direct nexus between excessive prices and harm to customers. CAUSE-PA states that in 2025, shopping-related uncollectible expenses were more than two times higher in Met-Ed and West Penn's service territory and more than three times higher in Penelec and Penn Power's service territory, compared to default service uncollectible expenses. CAUSE-PA observes that on a per customer basis, POR-related uncollectible expenses ranged between \$23-\$38, compared to \$8-\$15 for default service uncollectible expenses. CAUSE-PA emphasizes that these higher uncollectible expenses are recovered from FirstEnergy's customers and are not absorbed by the suppliers. CAUSE-PA further points out that the record demonstrates disproportionate harm to low-income households, noting that confirmed low-income shopping customers were charged substantially higher prices compared to other residential shopping customers – ranging between 37-56% above the applicable default service rate. CAUSE-PA R. Exc. at 10 (citing CAUSE-PA St. 1-R at 17-18).

Third, CAUSE-PA argues that the supplier intervenors have not presented evidence to credibly rebut the data demonstrating substantial harm. CAUSE-PA R. Exc. at 10. CAUSE-PA avers that none of those parties offered persuasive analyses demonstrating that the evidence of harm is incorrect or provided explanations that credibly account for the magnitude of disparities in pricing, terminations, uncollectible expenses, and complaints associated with shopping that are proven in the record. CAUSE-PA emphasizes that the Settling Parties did not rely on any single data point, "standing alone," to demonstrate that the proposed reforms are necessary. Rather, CAUSE-PA asserts that the cumulative data, including higher aggregate supplier pricing every month for 100 months, higher rates of involuntary termination and uncollectible expenses compared to default service customers, higher prices for low-income customers, and higher rates of consumer complaints, demonstrates that the reforms are needed to prevent harm to all residential consumers. *Id.* at 11.

CAUSE-PA submits that RESA has asked the Commission to rely upon some unidentified characteristic of shopping customers to explain why the termination rates for shopping customers are much higher than the termination rates for default service customers. CAUSE-PA avers that the ALJs correctly found a direct nexus between these outcomes, highlighting that the cost of service and ability to pay for that service are the controlling factors driving higher termination rates. CAUSE-PA R. Exc. at 12. In response to RESA's argument that there are multiple collections datapoints that measure different areas of FirstEnergy's collections activities, CAUSE-PA states that this argument does not invalidate the specific datapoints the Settling Parties relied on, particularly because the Commission's Regulations require EDCs to track collections data in various ways. *Id.* (citing 52 Pa. Code § 54.75). Moreover, in response to the supplier intervenors' arguments that customers may choose supplier products for non-price reasons, CAUSE-PA submits that this fact does not rebut the record evidence of aggregate harm or explain why termination rates and uncollectible expenses are disproportionately higher for shopping customers. CAUSE-PA believes that this argument lacks credibility because it suggests that customers would knowingly choose a higher price that they cannot afford when the consequence is termination of life-essential electricity to their home. CAUSE-PA R. Exc. at 13. CAUSE-PA points out the customers may continue to purchase value-added products, renewable products, long-term fixed products, or prices above the PTC under the Settlement provisions. *Id.* at 14.

Fourth, CAUSE-PA argues that FirstEnergy has satisfied its burden of proving that a waiver of Section 54.10(3) is supported by substantial evidence and in the public interest. CAUSE-PA explains that FirstEnergy has followed the clearly-defined legal standard for requesting a waiver of the regulation. CAUSE-PA R. Exc. at 14 (citing 66 Pa.C.S. § 501(a); 52 Pa. Code § 5.43(b); *Duquesne Light* at 8). CAUSE-PA states that the waiver request is not a repeal or amendment of statewide regulations; rather, it is a utility-specific waiver in a utility-specific DSP case based on the factual record

developed in this case. CAUSE-PA R. Exc. at 14-15. CAUSE-PA emphasizes that the waiver is also temporary because it pertains to this DSP term of four years and will be subject to review in FirstEnergy's next DSP proceeding. Contrary to the assertions of the supplier parties, CAUSE-PA avers that the requested waiver does not violate Sections 2806(a) or 2807(d)(1) of the Choice Act because the consumer maintains the right to choose the EGS, consistent with Section 2806(a), and FirstEnergy remains obligated to obtain affirmative consent to switch a customers' supplier, consistent with Section 2807(d)(1). *Id.* at 15. CAUSE-PA submits that this waiver does not bind other EDCs or impact supplier operations in other service territories, nor does it eliminate the Commission's ability to independently evaluate all future waiver requests, including any potential requests for renewal of the waiver recommended for approval in this case. Finally, CAUSE-PA asserts that the Commission should not defer waiver discussions to some undefined, future statewide proceeding because FirstEnergy customers are facing "real, current, and ongoing" harm, and the supplier intervenors should not be allowed to "ensnare meaningful consumer protections in a lengthy statewide policy inquiry." *Id.* at 16.

CAUSE-PA responds to the supplier intervenors' arguments that FirstEnergy's targeted consumer protection reforms will impair the function of the residential retail market. To the contrary, CAUSE-PA avers that the Settlement preserves direct access to the competitive market, the ability of EGSs to offer products at any price, and the ability of customers to affirmatively choose those products. CAUSE-PA asserts that strengthening consent requirements and POR rules will also strengthen the competitive market by restoring trust and accountability in the market and eliminating supplier subsidies that residential customers pay for in the form of higher uncollectible expenses. CAUSE-PA R. Exc. at 23. CAUSE-PA does not believe that Maryland's experience with legislative market changes has any bearing on the outcome in this case, noting that Town Square/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. *Id.* at 23-24. CAUSE-PA states that the supplier intervenors also failed to show that they cannot operate under the Settlement's framework. CAUSE-PA explains that 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 they want to remain on a variable rate contract, or if suppliers charging above the PTC absorb the collection risk, instead of shifting that risk to FirstEnergy and its customers, through POR. CAUSE-PA points out that Town Square/WGL's own witness admitted that it operates in Maine, where there is no POR program. *Id.* at 24.

2. Quarterly Affirmation for Variable Rate Contracts

a. Positions of the Parties³⁰

FirstEnergy stated that requiring quarterly customer consent for month-to-month variable rate products will encourage customers to make choices about the cost of their generation supply and help mitigate the detrimental impact of above-PTC prices on customer bills and affordability. FirstEnergy explained that EGS prices under variable rate contracts can change by the hour, day, or month based on market conditions according to the terms and conditions in the EGS's disclosure statement. FirstEnergy also explained that variable-rate product prices can swing dramatically, especially during extreme temperatures, and EGS disclosure statements do not provide customers with the EGS's specific variable pricing methodology. FirstEnergy M.B. at 49-50; FirstEnergy R.B. at 42-43. FirstEnergy argued that the opposing parties' position that the current Section 54.10(3) notices and the 2014 Rulemaking decided 12 years ago support a

³⁰ Most of the Parties' arguments relating to this proposal are addressed above in the arguments relating to FirstEnergy's proposal to return customers to default service, absent affirmative consent to remain with an EGS. As such, the discussion here focuses on the Parties' additional positions that are specific to variable rate contracts.

rejection of the affirmative consent requirement does not provide sufficient justification to disregard the well-documented harms in this proceeding. FirstEnergy's witness, Mr. Young, testified that any implementation costs FirstEnergy incurred to implement this proposal would be minimal because the attestation of affirmative customer consent will be processed through electronic data interchange transactions, and no system changes are necessary. FirstEnergy R.B. at 43.

The OCA supported the proposal, asserting that the affirmative consent requirement does not prohibit suppliers from providing variable rate products or limit suppliers' ability to market innovative services. Rather, the OCA averred that given the record evidence documenting the substantial costs borne by residential customers through negative-option renewals and higher supplier prices, affirmative consent ensures that customers remain on variable rate contracts only after knowingly and voluntarily reaffirming that decision. The OCA submitted that the main affordability problem occurs when customers initially enroll in an attractive fixed-price offer and are subsequently transitioned, often through negative-option renewals, to variable rate contracts that give the supplier unilateral and broad discretion to determine future prices. OCA M.B. at 39. The OCA explained that unlike fixed-price products, variable-rate contracts place customers at risk for significant and unpredictable wholesale market fluctuations. *Id.* at 40. The OCA believed that the currently required disclosures do not resolve this problem, as evidenced by the demonstrated harm on the record here, because they do not require customers to periodically affirm that they wish to continue purchasing electricity under pricing terms entirely within the supplier's discretion. OCA M.B. at 39-40; OCA R.B. at 50-51.

CAUSE-PA averred that it is just, reasonable, and firmly 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 this manner. CAUSE-PA argued that the Commission's Regulations, which were last revised over a decade ago,

have since proven insufficient to prevent the substantial and ongoing harm customers have experienced based on the record in this case. CAUSE-PA asserted that the root cause of customer harm is the “prolonged pattern of excessive pricing in the residential retail market, which cost FirstEnergy’s residential ratepayers in excess of \$888 million over a 100-month period, and has disproportionately impacted low-income households.” CAUSE-PA stated that these excessive charges are directly impacting the high numbers of payment troubled accounts and involuntary terminations for shopping customers. CAUSE-PA M.B. at 7-12, 23.

The EGS Parties contended that the quarterly-consent proposal will cause chaos for customers, EGS, and FirstEnergy. The EGS Parties stated that the proposal is inconsistent with the current regulatory framework where customers have already agreed to variable rate contracts and should not have this choice “second-guessed every three months.” EGS Parties’ M.B. at 12. They argued that the proposal violates anti-slamming and switching protections, would impose new operational and cost burdens on suppliers and utilities, and would risk harming customers who intentionally selected competitive products but do not respond to quarterly affirmations for their own reasons. *Id.* at 13.

Town Square/WGL argued that the quarterly affirmation proposal ignores that the Commission’s existing EGS customer disclosure statement regulations contain no requirement for EGSs to continually obtain consent from customers to continue their EGS supply service. Moreover, they emphasized that month-to-month contracts may be terminated by customers at any time without penalty. Town Square/WGL M.B. at 24.

RESA opposed the quarterly affirmation proposal, arguing that the Commission has already considered these concerns about variable rate contracts during the comprehensive 2014 Rulemaking in *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the*

Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers, Docket No. L-2014-2409385 (Final-Omitted Rulemaking Order entered April 3, 2014), revising the Commission's customer disclosure and contract expiration Regulations following the Polar Vortex. RESA stated that the Commission strengthened the disclosure requirements in Section 54.10, required detailed contract expiration notices, and required EGSs to provide customers with at least thirty days' advance notice of subsequent price changes after a customer transitions to a month-to-month variable-priced product. RESA M.B. at 51. RESA contended that the proposal will increase administrative burdens, create additional opportunities for customers to be involuntarily returned to default service, and discourage suppliers from offering innovative competitive products in Pennsylvania. *Id.* at 53-54.

Constellation supported the EGS Parties' and RESA's positions on this issue. Constellation M.B. at 14.

b. Recommended Decision

The ALJs recommended that the Commission approve the Settlement proposal of quarterly affirmation for variable rate contracts. R.D. at 209. The ALJs agreed with the proponents of this change that it would supplement, rather than conflict, with existing Commission Regulations. The ALJs stated that they did not find this Settlement provision to be inconsistent with Section 54.10(3) of the Commission's Regulations, but noted that the Company requested a waiver of Section 54.10(3) to implement its Supplier Tariff changes. The ALJs found that the Settlement provision requiring quarterly affirmation is beneficial because it addresses the arguments that: (1) variable-rate product prices, which are determined solely by the supplier, can fluctuate significantly, and (2) the information provided in the EGS disclosure statements may not specify the EGS's variable pricing methodology. The ALJs concluded that

quarterly affirmative consent would help to ensure that customers periodically and knowingly choose to remain on these variable EGS contracts. *Id.* at 208.

Additionally, the ALJs found it important that the Company projects minimal costs for implementing the quarterly affirmation requirement because the attestation of affirmative customer consent will be processed through electronic data interchange transactions and will not require any system changes for the Company. R.D. at 209 (citing FirstEnergy St. 1-R at 13). The ALJs highlighted that based on 12 years and \$888 million in documented harm to FirstEnergy customers, it is in the public interest to require suppliers charging month-to-month variable rates to confirm that customers affirmatively consent to be charged in that manner. R.D. at 209.

c. Exceptions and Replies

(1) EGS Parties Exception No. 2

In their Exception No. 2, the EGS Parties argue that the ALJs erred in recommending the approval of FirstEnergy's proposal to require quarterly affirmation from customers on variable rate contracts. The EGS Parties incorporate the argument set forth above in their Exception No. 1 that the ALJs' finding fails because it treats a non-waivable statutory mandate as being subject to a regulatory waiver. The EGS Parties also object on three other grounds. First, the EGS Parties argue that while the ALJs supported the quarterly affirmation requirement with the same \$888 million figure used to support returning customers to default service, the ALJs did not make a separate showing that the current 30-day price change notice in 52 Pa. Code § 54.10(2)(ii)(A)(I) is failing variable rate customers. The EGS Parties contend that this existing, less-restrictive alternative was not found to be inadequate based on the record evidence. EGS Parties' Exc. at 6.

Second, the EGS Parties argue that the ALJs did not address the EGS Parties' argument that 66 Pa.C.S. §§ 2806(a) and 2807(d)(1) require only one act of customer consent to establish a supplier relationship, not a recurring consent obligation. *Id.* at 6-7 (citing *Susquehanna Area Reg'l Airport Auth. v. Pa. PUC*, 911 A.2d 612, 623 (Pa. Cmwlth. 2006)). The EGS Parties assert that the Code does not allow a utility to change a customer's supplier, and there are two places in the Code which specifically prohibit utilities from changing a customer's supplier without affirmative consent. The EGS Parties contend that the Commission cannot waive the Code's requirements. Third, the EGS Parties argue that the ALJs fail to address the unrebutted testimony that re-affirmation increases supplier costs, which are passed through to customers, and risks sending customers back to default service after those customers made an informed choice to stay on a variable-rate product but simply did not respond to the quarterly attestation. EGS Parties' Exc. at 7.

(2) Town Square and WGL Exception No. 2

In its Exception No. 2, Town Square/WGL aver that FirstEnergy's proposed quarterly affirmation is inconsistent with existing Commission Regulations and cannot be lawfully approved outside of a formal rulemaking process. They state that the ALJs failed to address how this proposal can be lawfully enacted when it conflicts with the Commission's current customer enrollment regulation at 52 Pa. Code § 54.5 and customer renewal regulation at 52 Pa. Code § 54.10. Town Square/WGL Exc. at 15. Town Square/WGL contend that while FirstEnergy requests a waiver of 52 Pa. Code § 54.10(3), it does not request a waiver for these other Commission Regulations that are directly implicated by its quarterly affirmation proposal. *Id.* at 16. Town Square/WGL explain that Section 54.5 provides rules governing EGSs' service terms with their customers, including how month-to-month and variable price enrollments must be handled. *Id.* at 16-17. They explain that this regulation also requires EGSs to provide customers with conditions and limits on price variability, information about how

customers will receive notice of pricing changes, promotional information, explanations of penalties and fees, renewal provisions, cancellation provisions, the right of rescission, and how to contact the Commission and the OCA for information about retail electricity shopping. Town Square/WGL also explain that Section 54.10 only requires notice prior to contract expiration and permits automatic renewal of service with a customer's EGS. Town Square/WGL assert that neither of these regulations require an EGS to repeatedly confirm with its existing customers that they want to continue to receive service from the EGS. Town Square/WGL believe that for the Settlement to impose such a new requirement, it is necessary for the Commission's controlling regulations to be amended through a proper rulemaking process. *Id.* at 17.

(3) RESA Exception No. 1

In its Exception No. 1, RESA argues that the ALJs did not establish that the affirmative consent restrictions are necessary to address the asserted harm or that month-to-month variable-price products caused the pricing, termination, uncollectible or complaint outcomes relied upon to justify the restriction. RESA Exc. at 23. RESA avers that existing regulations already require advance notice of subsequent price changes and prohibit cancellation fees for automatically renewed month-to-month products. *Id.* (citing 52 Pa. Code § 54.10(2)(ii)(A)(I),(3)(i)(A)). RESA states that the ALJs agree with the Settling Parties that the existing regulations do not require periodic reaffirmation, that variable prices may fluctuate greatly, that disclosure statements may not contain the supplier's pricing methodology, and that the broader record demonstrates affordability concerns even with the current protections. Nevertheless, RESA challenges the ALJs' decision on the basis that it does not provide reasons why the existing protections are inadequate, ninety-day reaffirmation is necessary, or a reasonable alternative preserving the EGS choice would not address the concerns. RESA Exc. at 23.

(4) OCA Replies

In its Replies to Exceptions, the OCA argues that quarterly affirmation supplements existing consumer protections and reasonably addresses the specific risks attributed to variable-rate products. OCA R. Exc. at 20. The OCA avers that the ALJs properly recommended the adoption of the Settlement provisions because they do not prohibit variable-rate contracts, restrict the prices suppliers may charge, or prevent customers from receiving EGS products with prices that fluctuate. The OCA agrees with the ALJs that EGSs determine variable-rate prices, and the prices can fluctuate significantly, while existing disclosure statements may not specify the methodology the supplier will use to determine future prices. The OCA asserts that FirstEnergy demonstrated that existing protections have not prevented residential customers from remaining on higher-priced variable-rate products through inaction, contributing to the documented affordability concerns on the record. On the other hand, the OCA notes that RESA, the EGS Parties, and Town Square/WGL have not presented evidence showing that automatic renewals of variable-rate contracts provide meaningful consumer benefits. The OCA believes that competition is not served simply by permitting a supplier to retain a customer indefinitely based solely on the customer's failure to respond to a notice after the product's price has changed. *Id.* at 19.

(5) CAUSE-PA Replies

In its Replies to Exceptions, CAUSE-PA avers that the quarterly affirmation requirement for variable rates is a necessary and lawful consumer protection that is narrowly tailored to address clear evidence of harm. CAUSE-PA R. Exc. at 20. CAUSE-PA states that the ALJs' finding on this issue is supported by substantial evidence, consistent with the Choice Act's customer protection and universal service requirements, and within the Commission's authority. *Id.* at 22. Like the Settlement provision for return-to-default service customers, CAUSE-PA asserts that the quarterly

affirmation Settlement provision is a reasonable, targeted consumer protection that specifically addresses the same substantial evidence of excessive residential shopping prices, higher termination rates, and increased uncollectible expenses discussed above. *Id.* at 20.

CAUSE-PA agrees that the ALJs' analysis that the quarterly affirmation requirement "would supplement, rather than conflict with existing Commission regulations." CAUSE-PA reasons that while existing disclosure rules may notify customers that rates can change, the disclosures do not require customers to periodically confirm that they want to stay with a product whose price is determined by the supplier and may fluctuate significantly over time. CAUSE-PA notes that the prices may fluctuate by the hour, day, or month based on market conditions, and disclosure statements do not necessarily provide customers with the supplier's variable pricing methodology. As such, CAUSE-PA characterizes quarterly affirmation as a means of ensuring that customer choice remains "knowing, active, and current," not as a restriction on customer choice. CAUSE-PA explains that the Commission's Regulations have not been revised in over a decade and do not sufficiently address the type of ongoing customer harm that is present in the current record. CAUSE-PA submits that increased disclosures and education have not been enough to address the increasingly higher rates, resulting in higher terminations and uncollectible expenses. *Id.* at 21.

CAUSE-PA disagrees with the Supplier Parties' arguments that quarterly affirmation will cause customer confusion, operational burdens, or market disruption. CAUSE-PA points out that FirstEnergy presented credible evidence that implementation costs for the EGSs would be minimal because the affirmative customer consent attestation reform would be processed through electronic data interchange transactions and would not require any system changes. CAUSE-PA avers that while the supplier intervenors state generally that the reform would cost more, they did not quantify the costs or show that the requirement is unfeasible. Moreover, CAUSE-PA states that the

quarterly affirmation requirement does not prohibit variable-rate products, because suppliers remain free to offer month-to-month variable rate products, and customers remain free to choose them. Rather, CAUSE-PA contends, the Settlement will ensure that customers knowingly choose to remain on a variable rate product and provide affirmative consent to be charged in that manner. *Id.* at 22.

3. Disposition of 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,³¹ 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. FirstEnergy St. 1 (Corrected) at 21-22; FirstEnergy St. 1-R at 10; FirstEnergy Exh. DMY-13.

While the claims on the record here do raise obvious concerns, we are 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, 52 Pa. Code § 54.10, underlies the existing market rules applicable to these circumstances, permitting EGSs to retain customers upon contract expiration after proper notice. Second, we are unable to ascertain the root cause of the increased costs highlighted in the Settlement. Third, we question whether it is appropriate to make this modification in a single service

³¹ Settlement ¶ 66.

territory or if such a determination is best implemented universally across the state, for instance, through a rulemaking. Therefore, we are 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 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 inaction. Should retail market modifications be needed, we are interested in determining how best to implement those modifications.

Our preference, therefore, is to deny and eliminate these provisions from Paragraph 66 of the Settlement. Instead, it is 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 Section 54.10(3) of the Commission's Regulations 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 we are removing the aforementioned provisions from Paragraph 66 of the Settlement, the associated waiver request has become moot.

We acknowledge this action involves modifying the instant Settlement and may result in parties' withdrawal from the Settlement. Further, we 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 Code. Section 2807(e)(3.6) of the Code 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.

66 Pa.C.S. § 2807(e)(3.6) (emphasis added). Should the Settlement be withdrawn, we ask that FirstEnergy consider acting in good faith to not implement the DSP VII as originally filed in order to permit the Commission time to make a prudent and final determination as expeditiously as possible.

4. Changes to Purchase of Receivables Program

a. Positions of the Parties

As an initial matter, FirstEnergy noted the Commission does not have the authority to mandate POR programs for EDCs, and cited Commission precedent stating:

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 for EGSs. On the contrary, the Code specifically provides that the Commission cannot require EDCs to purchase EGS’ accounts receivable.

FirstEnergy M.B. at 51 (citing 66 Pa.C.S. § 2807(c)(3); *Petition of PPL Elec. Utils. Corp Request Approval of a Voluntary Purchase of Receivables Program and Merchant Function Charge*, Docket No. P-2009-2129502 (Opinion and Order entered November 19, 2009)).

According to FirstEnergy, the Settlement addressed concerns the current POR program eliminates the risk to EGSs that their customers may not pay their bills. FirstEnergy noted the POR program provides little incentive for EGSs to moderate prices. FirstEnergy argued these issues are compounded by POR-related uncollectible expenses disproportionately contributing to FirstEnergy's overall uncollectible expense. FirstEnergy M.B. at 51. The Settlement modified eligibility for the POR program and required all EGSs wishing to utilize the program to offer rate-ready billing and charge a rate that is at, or below, the FirstEnergy default service price at the time of a customer's enrollment or rate change transaction. Settlement at ¶ 67. FirstEnergy asserted the proposals included in the Settlement are reasonable and focused on protecting all customers from unnecessary and excessive costs associated with collection of EGS uncollectibles. FirstEnergy M.B. at 52.

FirstEnergy countered arguments raised by the Opposing Parties that POR changes were not necessary and clawback mechanism charges were decreasing by noting that a number of EGSs serving FirstEnergy customers charge prices 1.5 times higher than the PTC and generate POR-related write-offs exceeding the average for the entire EGS population. FirstEnergy St. 1 at 26-27. FirstEnergy noted the clawback mechanism recouped only a fraction of the uncollectible accounts generated by EGSs subject to the clawback mechanism. FirstEnergy averred the POR modifications reduce administrative burden and reduce the risk of excessive EGS write offs at the time of customer enrollment. *Id.* FirstEnergy stated it does not propose to eliminate its POR program and that EGSs not eligible for the modified POR program would be eligible to collect arrearages using the same legal options available to other competitive businesses. FirstEnergy M.B. at 52.

Regarding concerns raised by RESA that affordability alone does not justify the POR modifications, FirstEnergy argued RESA's concerns ignore the voluntary nature of the POR program, and the eligibility rules do not constitute a restriction on

competition requiring a finding of class-specific harm. FirstEnergy M.B. at 45-46. Despite its assertion that the changes do not constitute a restriction on competition, FirstEnergy also contended that the evidence in this proceeding did establish harm in the form of higher uncollectible expense, which is in turn recovered from commercial and residential customers. FirstEnergy M.B. at 45-46 (citing FirstEnergy St. 1 (Corrected) at 25-26).

The OCA supported the Company's proposed revisions to the POR program and argued FirstEnergy should retain the ability to determine under what circumstances its consolidated billing and collection system is used to collect supplier charges. OCA R.B. at 52; OCA St. 2-R at 20. The OCA noted that excessive supplier charges lead directly to customer arrearages, uncollectible accounts, and affordability challenges. When these excessive supplier charges are collected through UCB and purchased through POR, the financial risk associated with supplier pricing decision is shifted away from suppliers and onto the Company and its customers. OCA M.B. at 44 (citing OCA St. 2 at 9-10); OCA St. 2-R at 7.

The OCA stated that the Opposing Parties err in characterizing the POR proposal as prohibitive, noting that EGSs can still charge rates above the PTC, offer innovative products, and serve FirstEnergy customers, while the POR proposal simply conditions access to one particular utility-administered collection mechanism upon suppliers accepting responsibility for the collection risk associated with their own pricing decisions. OCA M.B. at 43. The OCA offered that nothing in the proposal prevents suppliers from creating and implementing their own billing and collection systems for above-PTC offerings and pointed to the separate billing and collection services utilized by EGSs for commercial and industrial customers. OCA M.B. at 44.

Lastly, the OCA responded to arguments advanced by Town Square/WGS that the POR revisions improperly use the PTC as a benchmark and price control,

asserting that the PTC serves as an objective benchmark for determining when FirstEnergy should be required to assume the financial risk associated with collecting supplier charges. OCA M.B. at 42.

CAUSE-PA echoed the argument made by FirstEnergy that the POR is a voluntary program and advocated that FirstEnergy should be given broad authority to structure the program in a way that best advances just and reasonable rates while adhering to statutory requirements. CAUSE-PA M.B. at 24 (citing 66 Pa.C.S. § 2807(c)(3)).

CAUSE-PA noted that Commission regulation prohibits termination of service for non-payment of non-basic service charges, whether that non-payment be in part or whole, and contended the rate-ready billing requirement provides an important safeguard to ensure non-commodity charges are excluded from POR. CAUSE-PA St. 1-R at 23-24 (citing 52 Pa. Code § 56.83). CAUSE-PA explained that the current POR requirements, specifically bill-ready billing, do not allow for easy differentiation of basic and non-basic charges. *Id.*

In response to RESA's assertion there are other, less restrictive alternatives available to address customer harm, CAUSE-PA noted that RESA did not provide any evidence or develop the record in support of alternative proposals. CAUSE-PA R.B. at 41. CAUSE-PA argued RESA misstated the applicable standard for review of the POR proposal, stating:

The standard requires only that the Commission [] review the record to determine the availability of a less restrictive alternative *capable of addressing harm*. There is no obligation on the parties to prove that they pursued all eventualities, only that the alternatives advanced on the

record were duly considered to determine if they may be adequate to stem identified harm.

CAUSE-PA R.B. at 41 (emphasis in original) (citing *RESA 2018*).

CAUSE-PA argued the POR revisions do not restrict prices or competition, stating the only consequence is that suppliers choosing to charge rates that exceed the default service price must bear the associated credit and collection risk. According to CAUSE-PA, that is not rate regulation or rate discrimination, it is reasonable risk allocation. CAUSE-PA R.B. at 34-35. Propounding upon this statement, CAUSE-PA asserted that there is no violation of Section 1502 of the Code, 66 Pa.C.S. § 1502, as the proposal results in POR being offered on the same terms and conditions that FirstEnergy bills its own default service customers. *Id.* at 35.

Regarding the evidence of harm to residential and low-income customers provided by the Settling Parties in this case, CAUSE-PA claimed the Opposing Parties failed to rebut or counter the evidence submitted. Finally, CAUSE-PA articulated there was no credible evidence to support the Opposing Parties' assertions that the POR revisions would restrict product offerings, and CAUSE-PA pointed to the fact that certain EGSs operated in jurisdictions without POR. CAUSE-PA M.B. at 38-39; CAUSE-PA St. 1-R at 22 and Appendix A-R.

The EGS Parties articulated five arguments in support of their recommendation that the Commission reject the Settlement's POR revisions. EGS Parties M.B. at 14-19.

First, the EGS Parties reiterated arguments submitted by the other EGS suppliers that POR is essential to the functioning of Pennsylvania's retail market. Specifically, the EGS Parties echoed testimony provided by RESA and Town

Square/WGL arguing that viable POR programs facilitate utility consolidated billing, promote consistent billing and collection practices, reduce barriers to entry, and have repeatedly been maintained by the Commission as part of the market structure, and POR removes supplier credit and collections risk allowing EGSs to compete on price and product innovation rather than an ability to manage collections and financing bad debt. EGS Parties M.B. at 14 (citing RESA St. 1 at 29; Town Square/WGL St. 1 at 9).

Second, the EGS Parties submitted that the Commission, consistent with the Code, has the authority to mandate and regulate POR programs. EGS Parties M.B. at 14-15 (citing *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271 (Order entered August 6, 2009) (*PPL Electric Utilities Corporation Markets* at 27)). Based on this authority, the EGS Parties contended there is no basis for restricting access to a properly functioning POR program simply due to the level of prices. EGS Parties M.B. at 15.

Third, the EGS Parties asserted the proposed POR revisions in the Settlement withhold access to critical market infrastructure from any product priced above the PTC, and that such differential treatment is discriminatory pursuant to the Code. EGS Parties M.B. at 15 (citing 66 Pa.C.S. § 1502). Specifically, the EGS Parties argued:

Subjecting EGSs to differential and detrimental treatment because their prices are above or below the PTC — which is itself an arbitrary measure that may not reflect the supplier's current wholesale costs, product features, contract duration, risk allocation, or customer-selected value — violates Section 1502 by discriminating among suppliers on the basis of price.

EGS Parties M.B. at 15.

Fourth, the EGS Parties expounded upon linking access to the POR program and the PTC and argued the proposal functioned as unauthorized rate regulation. EGS Parties M.B. at 16. The EGS Parties stated that the POR program and utility consolidated billing are utility services subject to the Code's principles. EGS Parties M.B. at 16 (citing 66 Pa.C.S. §101, 2807(c)). The EGS Parties asserted the revisions to POR are "discrimination based solely on price, and it is even more egregious where the record contains no evidence that POR itself causes the alleged customer harm." EGS Parties M.B. at 17.

Finally, the EGS Parties argued the proposed changes to the POR program must be rejected as FirstEnergy has failed to show POR causes the harm alleged stating that "FirstEnergy's evidence at most attempts to show that some customers on competitive supply paid more than the PTC during certain periods." EGS Parties M.B. at 17.

According to the EGS Parties, this failure is exacerbated by the fact the proposal is administratively unworkable and unstable. *Id.* Among the reasons for this administrative instability is the EGS Parties' argument that the changes would require FirstEnergy to police supplier prices, determine eligibility, remove or restore POR access, and manage billing consequences on a rolling basis, as well as force homogeneity among suppliers who must mimic default supply pricing structures. EGS Parties at 17-18 (citing 66 Pa.C.S. § 2804(2)).

Town Square/WGL outlined the history of POR in Pennsylvania and noted "POR has become the standard framework in most markets in the country that utilize utility consolidated billing." Town Square/WGL M.B. at 28 (citing Town Square St. 1 at 6). Town Square/WGL argued the POR program, as modified by the Settlement, would not be viable and "would result in the destruction of the residential retail market in

its territory, rather than facilitating the fully functional retail market for generation” the Competition Act seeks to create. Town Square/WGL M.B. at 29.

Town Square/WGL contended that a viable POR program provides tangible benefits to customers and explained:

With POR, suppliers do not need to screen customers for payment risk, and are therefore able to offer the best rate products to all of their customers equally. This is a very important point to understand. POR provides access to better rates to more customers, regardless of their income or credit status. If suppliers must bear full credit risk for competitive products that can be above the PTC at the time of enrollment depending on market conditions, many suppliers will rationally reduce offerings or exit the market. This will reduce customer choice and eliminate options that protect customers from future PTC increases and/or provide other benefits that some customers may value...

Town Square/WGL M.B. at 30 (citing Town Square/WGL St. 1 at 7, 9). The revisions to the POR program, according to Town Square/WGL, would eliminate a variety of EGS offers from POR participation, leading to EGSs not offering them and potentially leading to customers paying more. Town Square/WGL R.B. at 13 (citing Town Square St. 1 at 12).

Town Square/WGL also posited the proposal would require suppliers to operate differently in FirstEnergy’s territory, as FirstEnergy would be the only EDC applying restrictions on POR access. Town Square/WGL reasoned that this difference could lead to suppliers incurring additional costs to operate in FirstEnergy’s territory, with those costs reflected in price offerings to customers. Town Square/WGL M.B. at 33-34 (citing Town Square/WGL St. 1 at 12). As an example, Town Square/WGL pointed to Maryland, where statewide termination of EGS POR programs resulted in

tangible adverse customer impacts that could be similar should the Settlement's POR revisions be adopted. Town Square/WGL R.B. at 12-13.

Town Square/WGL disputed that FirstEnergy's PTC should operate as a benchmark for POR eligibility and asserted default service operates as a backstop including no value additions, price certainty, or consideration of customer preferences. Town Square/WGL M.B. at 35 (citing Town Square/WGL St. 1 at 14). Town Square/WGL argued that both the PTC and the rate of default service uncollectibles have risen significantly more than the rate of EGS uncollectibles. Town Square/WGL M.B. at 36-38.

Finally, Town Square/WGL responded to the argument that it operates in Maine – which does not offer a POR program – and contended that fact had no relevance given the Commission's prior determinations regarding the importance of POR programs in Pennsylvania. Town Square/WGL R.B. at 15.

RESA opposed the changes to the POR program in the Settlement and argued the changes modify one of the bedrocks upon which Pennsylvania's competitive retail market relies. RESA M.B. at 56. RESA countered the assertions of the Settling Parties regarding affordability and noted the proposal is not limited to modifying the POR program for residential customers but seeks to modify the program for all residential and commercial customer classes eligible for POR. *Id.* at 57. RESA asserted that the evidence did not support the expansive nature of the POR programs and that nothing in FirstEnergy's DSP VII filing explains why rewriting the rules governing the POR program for every residential and commercial customer class is an appropriate response to the residential affordability concerns identified by FirstEnergy. RESA M.B. at 58. RESA avowed that mismatch between the scope of the alleged harm, and the breadth of the proposed restriction is itself a sufficient reason to reject the proposal. *Id.*

RESA also raised concerns regarding the data relied upon by the Settling Parties to establish harm.

More fundamentally, the principal data relied upon by FE PA and the Settlement proponents do not actually measure supplier-specific collection performance. As Mr. Lacey explains, FE PA's uncollectible expense analyses are based upon accounting allocation methodologies that allocate generation-related uncollectible expense between default service and POR based upon billed revenues rather than actual supplier-specific write-offs. Moreover, FE PA maintains multiple datasets regarding customer payment performance – including write-offs, payment-troubled customers, arrearages, and other measures – that do not necessarily measure the same thing. The existence of those multiple datasets makes it difficult to conclude that any single metric, standing alone, provides a sufficient basis for the significant competitive market restrictions FE PA proposes.

RESA M.B. at 58-59 (citing RESA St. 1-SR at 10-12). RESA added that point-in-time comparisons of competitive supplier prices and the PTC do not establish harm and the data relied upon in support of the Settlement does not measure supplier-specific collection performance. RESA St. 1-SR at 10-12.

RESA stated the Settling Parties failed to analyze whether the changes would affect supplier participation, attrition, product diversity, customer access to competitive products, or innovative retail offerings before proposing this significant market restriction. RESA M.B. at 59 (citing RESA St. 1-R at 20-21). This failure, according to RESA, is compounded by the failure of the Settling Parties to consider and analyze whether the alleged harm could be addressed via refinements to the existing clawback mechanism. RESA M.B. at 60.

Finally, RESA contended the changes; specifically, conditioning POR participation on adherence to First Energy's "preferred pricing benchmark," creates a

situation where the Commission accomplishes rate regulation of competitive generation prices indirectly through POR eligibility, in violation of the Choice Act. RESA M.B. at 62.

Constellation did not brief the POR issue but indicated that it supported the positions advanced by RESA and the EGS Parties on this matter. Constellation M.B. at 14.

b. Recommended Decision

In the Recommended Decision, the ALJs found the arguments advanced by RESA, the EGS Parties, Town Square/WGL, and Constellation were countered by the fact that the 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.” R.D. at 227. The ALJs documented concerns regarding higher uncollectible expenses amount shopping accounts, specifically, that POR-related uncollectible rates were 22-56% higher than default service uncollectible rates and uncollectible expenses associated with POR were \$23-\$38, compared to \$8-\$15 for default service uncollectible expenses. R.D. at 227 (citing CAUSE-PA Exh. 1-R).

The ALJs were also unmoved by arguments suggesting the POR proposal be denied because of its application to POR-eligible commercial classes, noting that the record evidence established “harm in the form of higher uncollectible expense that is recovered from both residential and commercial customers.” R.D. at 228 (citing FirstEnergy St. 1 at 25-26).

Finally, the ALJs found sufficient support for the requirement that suppliers utilize rate-ready billing, finding the requirement was based on the Commission’s prohibition on termination for non-payment of non-basic service charges and allows

FirstEnergy to more easily differentiate between basic and non-basic service charges. R.D. at 228 (citing 52 Pa. Code § 56.83).

The ALJs found that the proposed POR amendments were “measured and targeted and allow POR to remain available to suppliers that want the benefit of guaranteed payment alleviation of collections costs, while protecting customer from paying excessive collections costs.” R.D. at 229. The ALJs noted that ending the clawback mechanism will reduce administrative burden on FirstEnergy. R.D. at 229 (citing FirstEnergy St. 1-R at 13).

c. Exceptions and Replies

(1) EGS Parties Exception No. 3 and Replies

The EGS Parties, in their Exception No. 3, contend that the ALJs misconstrued their argument by focusing on the voluntary nature of the POR program, instead of focusing on the argument that offering POR to some suppliers while denying it to others based solely on the supplier’s price is unreasonable discrimination under 66 Pa.C.S. §1502, and constitutes indirect rate regulation of EGS pricing which neither FirstEnergy nor the Commission have authority to impose. EGS Parties Exc. at 7-8. The EGS Parties make two arguments in support of this point: (1) the Commission has imposed a duty on EDCs to provide POR; and (2) based on Commission precedent EDCs are required to offer POR programs, which implicates the prohibition on discrimination in 66 Pa.C.S. §1502. EGS Parties Exc. at 8-9.

Next, the EGS Parties challenged the ALJs’ conclusions regarding POR-related uncollectible rates, cautioning that higher collectibles “establishes a correlation between shipping accounts and higher uncollectibles – it does not establish

that above-PTC pricing causes that outcome, as opposed to other factors.” EGS Parties Exc. at 9.

Finally, the EGS Parties purport that the ALJs’ failure to consider amendments to the existing clawback mechanism is indicative of the ALJs’ failure to consider reasonable alternatives to the proposed exclusions of suppliers based on price. EGS Parties Exc. at 9.

(2) Town Square and WGL Exception Nos. 3 and 4

Town Square/WGL, in its Exception No. 3, advances three arguments against the ALJs’ consideration and recommended adoption of the amendments to the POR program: (1) Pennsylvania law mandates a competitive retail market of which POR is a vital part; (2) the proposed POR changes would violate the Competition Act’s mandate for a competitive retail electric market; and (3) the ALJs ignore the consequences associated with approval of the POR changes. Town Square/WGL Exc. at 18-33.

First, Town Square/WGL contend that focusing on the voluntary nature of POR programs disregards Commission precedent holding that POR is a vital component of an effective retail market. Town Square/WGL Exc. at 19. Town Square/WGL particularly focuses on the Commission’s decision in *PPL Electric Utilities Corporation Retail Markets* in support of its position, noting that in that decision the Commission stated: “it is the Commission’s judgment that a viable POR program is an essential element to the creation of a competitive market for generation in Pennsylvania...” Town Square/WGL opine that a POR is an essential tool for increasing EGS firm entry into the retail electric market and that “a properly functioning POR program can reduce costs for shopping customers and, therefore, be an incentive for the Company to minimize its own cost of electricity for DSP customers.” Town Square/WGL Exc. at 19-20 (citing

PPL Electric Utilities Corporation Retail Markets, Docket No. M-2009-2104271
(Order entered August 6, 2009) at 27-30).

Second, Town Square/WGL assert that the record shows the proposed changes to the POR program are “simply not viable and would result in the destruction of the residential retail market” in FirstEnergy’s territory. In support, Town Square/WGL assert that requiring suppliers to evaluate the creditworthiness of individual customers presents a barrier to entry into the retail market for EGSs, will lead to an increase in supplier rates to counter credit risk, and could lead to reduced offerings or suppliers exiting the market. Town Square/WGL Exc. at 21-22.

Finally, Town Square/WGL reiterate that the revisions the POR program “would significantly reduce the number and variety of customer offers.” Town Square/WGL Exc. at 22-23 (citing Town Square/WGL St. 1 at 9). Town Square/WGL also note that none of the suppliers currently operating in the FirstEnergy service area serve residential customers without a POR. Town Square/WGL Exc. at 23 (citing Town Square/WGL Exh. RM-1). In its Exceptions, Town Square/WGL offer and consider the example of Maryland, where it alleges similar proposals were enacted, and states the outcome “was an end to the residential market in Maryland as all of the suppliers ceased making offers...” Town Square/WGL Exc. at 25 (citing RESA St. 1 at 9-11).

Town Square/WGL also alleged the changes fail to account for long-term pricing contracts offered by EGSs which may begin above the PTC, but subsequently fell below as the PTC rises, noting the POR changes would preclude suppliers from offering these types of contracts. Town Square/WGL Exc. at 26.

Town Square/WGL’s Exception No. 4 focuses on what it believes is a failure of the ALJs “to consider the clear data in the record...” contradicting concerns

regarding uncollectible expense attributable to purchased EGS accounts receivable. Town Square/WGL specifically note that accounts served by default service contribute more to uncollectible expenses than accounts served by suppliers and that the increase in POR related uncollectibles is outpaced by growth of default service uncollectibles. Town Square/WGL Exc. at 27-28 (citing Town Square/WGL Exh. RM-6 and RM-7).

Town Square/WGL contend that:

[T]he record includes no evidence or testimony that establishes a causal link between supplier pricing relative to the PTC and customer unaffordability or delinquencies, or how the POR proposal would somehow improve affordability or reduce delinquencies... Furthermore, FirstEnergy's testimony does not quantify how much of the Company's POR-related uncollectibles are actually attributable to EGS pricing as opposed to broader economic conditions affecting all customers.

Town Square/WGL Exc. at 32.

(3) RESA Exception Nos. 1 through 4

RESA, in its Exception No. 1, argues that the ALJs failed to properly apply the Competition Act's framework and overlooked the market implications of the changes proposed in the Joint Settlement. Specifically, RESA raises three issues: (1) the ALJs improperly attempted to regulate competitive generation prices, in contradiction of the Competition Act; (2) the ALJs ignored the Competition Act's requirement that the Commission allow for a functioning competitive market; and (3) the evidence in the record fails to support the broad changes proposed by the Joint Settlement and which the ALJs recommended be approved in the Recommended Decision. RESA Exc. at 5-13.

First, RESA argues that the ALJs' recommended adoption of the POR amendments attempts to use regulation to limit the price of all generation to the PTC by removing access to POR for suppliers pricing service above the PTC. RESA Exc. at 7. Specifically, RESA claims:

The Commission may not accomplish indirectly through POR eligibility what the Competition Act prohibits directly by making the EDC's default-service price the dividing line for regulatory consequences imposed on competitive generation prices. Implementing a restriction with the goal of regulation the price of generation, as the RD supports here, is patently inconsistent with the Competition Act and the Commission cannot do it.

RESA Exc. at 7 (citing 66 Pa.C.S. § 2802(5), (14), § 2806(a); RESA M.B. at 62).

Second, RESA asserts the ALJs erroneously relied on a finding that none of the proposed changes in the Joint Settlement legally prohibits customer shopping. RESA Exc. at 11. RESA notes this focus ignores the Commission's obligation under the Competition Act "to ensure a properly functioning and workable competitive retail market exists in the state." RESA Exc. at 11 (citing *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952 at 2, 5 (Order entered April 29, 2011)). RESA contends the Commission cannot impose restrictions impacting the market without a robust consideration of the record in this matter, particularly the evidence submitted by RESA and the EGS Parties regarding the negative impacts the amendments would have on the market. RESA cites the Commonwealth Court for its position that any restrictions must be supported by substantial reasons, including the absence of reasonable alternatives. RESA Exc. at 11-12 (citing *CAUSE-PA 2015* at 1103-04). RESA expounds on this broader point, arguing that the evidence relied upon by the ALJs does not establish that above-PTC EGS pricing caused the asserted customer harm, much less that the challenged restrictions are necessary to address them. RESA Exc. at 13.

RESA, in its Exception No. 2, raises similar claims to those set forth above in its Exception No. 1, but adds more substance to its argument that the ALJs erred in finding the technical availability of retail choice is sufficient to support adoption of the POR amendments, and that instead the Commission must consider whether the Joint Settlement will preserve a functioning competitive market. RESA Exc. at 14. RESA asserts that the ALJs did not answer the critical question raised by RESA regarding POR amendments, namely: “what happens to supplier participation, product availability, innovation, and meaningful customer choice when access to a mechanism [POR] upon which the existing residential market actually relies is conditioned upon supplier price and billing methodology...” RESA Exc. at 17.

RESA also considers the example of Maryland to illustrate the possible negative repercussions from the ALJs’ recommended adoption of the POR program amendments set forth in the Settlement. RESA argues that after Maryland adopted proposals similar to those proposed in this proceeding, the formal legal right to shop continued to exist, but the market no longer functioned or provided customers with meaningful choice. RESA Exc. at 19 (citing RESA St. 1-SR at 8-9, 13-15). RESA, referring to this example, concludes the Choice Act “requires preservation of a functioning competitive market, not merely preservation of a legal right to shop...” and that the ALJs failed to conduct the proper analysis of the impact of the POR amendments on the retail market. RESA Exc. at 20.

RESA, through its Exception No. 3, builds on the claim made in its Exception Nos. 1 and 2, claiming that the ALJs erred in finding no less reasonable alternatives existed to address the alleged harm from the POR program. RESA states this issue is compounded by the Settlement Parties failing to establish a connection between the alleged harm, the inadequacy of other measures, and the reasonableness of the amendments in the Joint Settlement. RESA Exc. at 21.

RESA acknowledges the claims advanced by FirstEnergy, and accepted by the ALJs, that the existing clawback mechanism recovers only a portion of uncollectibles, operates retroactively, and does not consider risk of non-payment at enrollment. However, RESA submits the issue was not whether the clawback mechanism eliminated or resolved the alleged harm but that the Settlement Parties bore the burden to establish that the substantially broader price-based restriction is necessary and that no reasonable alternative would adequately address the demonstrated harm. RESA Exc. at 24. RESA declares that burden has not been met with the POR amendments that the ALJs recommended be adopted in the Recommended Decision. RESA bolsters its argument by pointing to the expansiveness of the POR amendment, offering that the record shows the affordability issues used as support for the POR amendment relate to residential customers, but that the changes are applied to commercial shopping customers as well. *Id.* at 25.

In its Exception No. 4, RESA reiterates much of the argument stated above, again challenging the Recommended Decision on the basis that RESA does not believe the evidentiary record supports the findings of the ALJs regarding the harm befalling shopping customers. RESA argues that the ALJs erred in three ways: (1) they accepted the Settling Parties' interpretation of a wide variety of data and found the existence of a relationship between the data and the alleged harm to be causation; (2) they treated that inferred causation to be evidence establishing customer harm; and (3) they relied upon that harm to justify recommending the approval of the Joint Settlement. RESA Exc. at 33. RESA insists the ALJs' recommended approval of the Settlement must go beyond such a cursory review and instead determine what the data establishes and whether any proven harm supports the amendments adopted. *Id.*

(4) FirstEnergy Replies

FirstEnergy responds that the Settlement's proposals are necessary to limit harm association with current EGS rules and unfettered access to POR. In support of the proposals in the Joint Settlement, FirstEnergy points to residential shopping customers paying \$82 million more than the PTC in 2025, as well as the following:

- Service termination rates ten times higher for residential shopping customers than residential default service customers. FirstEnergy Exh. DMY-10; CAUSE-PA St. 1, at 23-25.
- Involuntary termination rates in 2025 of 14-22% for residential shopping customers compared to 1-3% for residential default service customers. CAUSE-PA St. 1 at 24-25.
- An average, per-customer, write-off balance for residential shopping customers of \$2,173, compared to \$972 for residential default service customers, a difference that correlates to a higher risk for involuntary termination. RESA Exh. FL-28.
- An uncollectible expense of \$22.83 per residential shopping customers, almost three times the residential default service customer uncollectible expense of \$7.82 per customer. FirstEnergy St. 1-R at 9-10; FirstEnergy Exh. DMY-12; CAUSE-PA St. 1-R at 17-18.
- Between 2022 and 2025, on average, 40% of FirstEnergy's total residential uncollectible expense was attributable to purchased EGS accounts receivable, but only 18% of residential customers shopped over the same period. FirstEnergy St. 1-R at 9-10; FirstEnergy Exh. DMY-12.
- The number of consumer complaints involving EGS in 2025 was 50% higher than in 2024. FirstEnergy St. 1 (Corrected) at 22.

FirstEnergy claims the ALJs properly found it had attempted to resolve these issues via less restrictive alternatives, including the clawback mechanism. *Id.* at 15. FirstEnergy states that despite prior changes to the POR program, FirstEnergy recoups only a small fraction of the uncollectible amounts from EGSs who fail the clawback screening test. FirstEnergy R. Exc. at 15 (citing FirstEnergy R.B. at 38).

FirstEnergy counters the suggestions of the Opposing Parties and states the changes proposed in the Settlement do not limit competition, noting that EGSs can continue to offer any pricing, contract duration, and non-price attributes they wish and that arguments residential shopping customers were paying higher prices for value-added products were unsupported in the record. FirstEnergy R. Exc. at 15-16 (citing FirstEnergy St. 1-R at 13; R.D. at 37, 196-99, 208, 229).

Next, FirstEnergy addresses the market concerns raised by the Opposing Parties. FirstEnergy argues that “[t]he Commission does not have the authority to compel EDCs to purchase EGS receivables and absorb collection risk...” and notes that changing eligibility rules for the voluntary POR program does not constitute a restriction on competition. FirstEnergy R. Exc. at 19-20. FirstEnergy offers that the Commission has previously held, in *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) (*Respond Power*), that:

...participation of 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.

Id. at 20 (citing *Respond Power* at 46).

Finally, FirstEnergy notes that EGSs who choose not to utilize rate ready billing or to charge rates higher than PTC still have access to UCB and may pursue collection of arrearages consistent with the legal options available to other competitive businesses. FirstEnergy R. Exc. at 20 (citing FirstEnergy Initial Brief at 52).

FirstEnergy requests the Commission deny the Exceptions of Opposing Parties and adopt the Recommended Decision without modification.

(5) OCA Replies

In response to RESA Exception Nos. 1 and 2, the OCA argues that the Choice Act does not prohibit adoption of the Recommended Decision, noting that the Joint Settlement does not regulate the prices EGSs may charge, prohibit customers from selecting an EGS, or restrict suppliers from competing for customers. OCA R. Exc. at 2. Instead, the OCA argues the Joint Settlement addresses recognized and demonstrated harms associated with the DSP, which is within the Commission's authority. OCA R. Exc. at 2 (citing 66 Pa.C.S. § 2803(4), 2807(e) (3.2-3.3)).

The OCA replies to RESA Exception Nos. 1-4, the EGS Parties' Exception No. 3, and Town Square/WGL's Exceptions No. 3-4, and contends that the ALJs correctly recommended the approval of the POR eligibility requirements included in the Settlement. OCA R. Exc. at 20. Namely, the OCA states the ALJs correctly found that POR was a voluntary program, subject to reasonable eligibility criteria tailored to mitigate the disproportionate collection risk associated with unrestricted POR access. *Id.* Citing to the Commission's Regulations, the OCA counters the Excepting Parties' claims that POR is required, noting the Regulation states "[t]he public interest would be served **by consideration** of an EGS receivables purchase program in each service territory." OCA R. Exc. at 20 (citing 52 Pa. Code §69.1814) (emphasis added).

After arguing that no statutory entitlement to a POR program exists, the OCA states the ALJs were correct in finding the proposed changes to POR eligibility were reasonably and rationally related to the proven harms. OCA R. Exc. at 21. The OCA points out that the POR program, as constructed currently, allows high supplier charges to be billed through UCB, with EDC purchase of resulting receivables guaranteeing payment to EGS while pushing the risks and consequences of collection onto FirstEnergy and its customers. OCA R. Exc. at 21 (citing OCA R.B. at 54).

The OCA also argues that no part of the Recommended Decision transforms the PTC into a regulatory price ceiling. OCA R. Exc. at 21. Instead, the OCA notes the PTC is an objective benchmark advancing the goal of POR – providing a utility-administered billing and collection mechanism that properly balances the public interest. OCA R. Exc. at 21 (citing OCA R.B. at 54). The OCA argues that EGSs remain free to offer products with renewable energy, rewards, energy-efficiency products, long-term price certainty, or other value-added features and that the limitations imposed are not arbitrary discrimination but, indeed, rooted in a rational relationship between collection risks and eligibility for POR. OCA R. Exc. at 22.

Finally, the OCA contends that RESA’s Exception No. 4 “is essentially a request for the Commission to ignore the record evidence...” and reiterates the claims above that the record evidence is sufficient and shows a causal connection between the POR program and the harms suffered by default service customers. OCA R. Exc. at 24.

(6) CAUSE-PA Replies

CAUSE-PA counters assertions made by the Opposing Parties that the Choice Act precludes the reforms in the Joint Settlement, arguing that it is “well settled that competition must bend to address ‘other important concerns – including the panoply of policy priorities, consumer protections, and obligations enshrined in the Choice Act

and the Public Utility Code.” CAUSE-PA R. Exc. at 2-3 (citing CAUSE-PA M.B. at 3; *CAUSE-PA 2015*, 120 A.3d at 1103). CAUSE-PA claims that the ALJs properly found substantial evidence of the harm the Settlement seeks to remedy and concluded correctly that no reasonable alternatives existed on the record to mitigate that harm. CAUSE-PA R. Exc. at 3.

CAUSE-PA argues that the POR program reforms are narrowly tailored to address harm and necessary and lawful consumer protection. CAUSE-PA R. Exc. at 17. Specifically, CAUSE-PA renumerates the substantial factual determinations supporting the POR program reforms and notes “the Settlement does not eliminate POR, prohibit suppliers from serving customers, cap supplier rates, or bar any competitive product.” CAUSE-PA R. Exc. at 18. CAUSE-PA states that POR, contrary to the suggestions of the Opposing Parties, is not a statutory entitlement. This, according to CAUSE-PA, is because the Choice Act expressly provides that an EDC may not be required to provide a POR program and that participation in a POR program may be conditioned on requirements protecting customers from excessive cost shifting. CAUSE-PA R. Exc. at 18-19 (citing 66 Pa.C.S. §2807(c)(3); CAUSE-PA M.B. at 24-29; CAUSE-PA R.B. at 33-43).

CAUSE-PA contends the Opposing Parties mischaracterize the revised POR program as impermissible rate regulation. Instead, counters CAUSE-PA, 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.” CAUSE-PA R. Exc. at 19. CAUSE-PA posits that the proposed reforms appropriately address the documented harms associated with retail shopping uncollectibles. *Id.* at 20.

Finally, CAUSE-PA states that the ALJs properly disregarded the speculative warnings advanced by the Opposing Parties that the reforms in the Joint

Settlement will result in destruction of the retail market. CAUSE-PA R. Exc. at 23. CAUSE-PA notes the Recommended Decision preserved the competitive market in Pennsylvania, preserved the POR program, and preserved customer choice, all while properly addressing document customer harm. *Id.*

d. Disposition

Upon review of the Exceptions in this matter, we shall deny the Exceptions and adopt the Recommended Decision without modification. In doing so, we approve the Settlement’s proposal modifying the eligibility requirements for EGSs to utilize the POR program.

Foundational to our denial of the Exceptions is that EGS participation in POR programs is voluntary and subject to modifications to address issues such as consumer protection, functioning of the retail market, and obligations to provide electricity at the least cost over time. As the Commission has previously held in *Respond Power*:

...participation of 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.

Respond Power at 46. Further, it is well settled the Commission may exercise its authority to “bend” competition under the Choice Act and the Code to address “important concerns.” *See CAUSE-PA 2015* at 1103.

Here, FirstEnergy and the other Settling Parties have raised concerns and established multiple harms stemming from EGSs’ unrestricted access to guaranteed upfront payment of the face value of EGS accounts receivable. The proposal in the

Settlement is tailored to address these documented concerns about the excessive levels of residential generation uncollectible expense attributable to purchase EGS accounts receivable, concerns unassuaged by the application of a clawback mechanism.

The Opposing Parties challenge the evidentiary support for the POR revisions, arguing the changes are unjustified and the evidence fails to provide “substantial reasons” for the changes. *See CAUSE-PA 2015* at 1104; citing *PP&L Indus. Customer Alliance v. Pa. PUC*, 780 A.2d 773, 782 (Pa. Cmwlth. 2001). However, the record evidence in this matter is clear and substantial. As restated by FirstEnergy in its Replies to Exceptions, the following concerns are associated with the POR program as currently constructed:

- Service termination rates were ten times higher for residential shopping customers than residential default service customers. FirstEnergy Exh. DMY-10; CAUSE-PA St. 1, at 23-25.
- Involuntary termination rates in 2025 were 14-22% for residential shopping customers compared to 1-3% for residential default service customers. CAUSE-PA St. 1 at 24-25.
- There was an average, per-customer, write-off balance for residential shopping customers of \$2,173, compared to \$972 for residential default service customers, a difference that correlates to a higher risk for involuntary termination. RESA Exh. FL-28.
- There was an uncollectible expense of \$22.83 per residential shopping customer, almost three times the residential default service customer uncollectible expense of \$7.82 per customer. FirstEnergy St. 1-R at 9-10; FirstEnergy Exh. DMY-12; CAUSE-PA St. 1-R at 17-18.
- Between 2022 and 2025, on average, 40% of FirstEnergy’s total residential uncollectible expense was attributable to purchased EGS accounts receivable, but

only 18% of residential customers shopped over the same period. FirstEnergy St. 1-R at 9-10; FirstEnergy Exh. DMY-12.

- The number of consumer complaints involving EGS in 2025 was 50% higher than in 2024. FirstEnergy St. 1 (Corrected) at 22.

FirstEnergy R. Exc. at 14-15. These issues are tangible and cause harm to customers through higher uncollectible expense, with these higher expenses recovered from both residential and commercial customers. FirstEnergy St. 1 (Corrected) at 25-26. We are, therefore, unpersuaded by the arguments advanced by the Opposing Parties that the Settlement's changes should be denied for being overly broad and including commercial customers.

The documented harms also prove that suppliers charging rates above the PTC create a materially different risk profile to EDCs forced to purchase EGS receivables than suppliers charging prices at or below the default service cost. R.D. at 227.

The proposed POR criterion requiring suppliers to utilize rate-ready billing is also well-supported by the record. Currently, EGSs may use bill-ready or rate-ready billing. FirstEnergy St. 1 (Corrected) at 27. The Settlement's proposed rate-ready billing requirement ensures FirstEnergy can differentiate between basic and non-basic charges. CAUSE-PA R.B. at 42. As noted by CAUSE-PA:

When a supplier utilizes bill-ready billing, FE PA cannot differentiate between basic and non-basic charges, which can lead to the unlawful termination of households that fall behind on non-basic charges. Restricting the POR to rate

ready billing ensures compliance with this critically important provision of the Commission's regulations.

CAUSE-PA R.B. at 42 (citing 52 Pa. Code § 56.83). The Settlement's proposal at ¶ 67 is critical to customer protection and adherence to the Code.

The Commission recognizes the significant benefits provided to EGSs and suppliers by POR. As Town Square/WGL noted, "POR removes supplier credit and collections risk so suppliers can compete on price and product innovation, rather than their ability to finance bad debt and manage collections." Town Square/WGL St. 1 at 9. However, the documented harm discussed above provides a substantial basis for conditioning access to POR.

It is also critical that the Settlement preserves POR for the Company's DSP VII and that EGSs remain free to charge rates higher than the PTC, market renewable products, and offer long-term fixed-price contracts or any other non-price features. UCB will also remain available to all EGSs, whether they utilize rate-ready billing or not. There is no attempt to prevent or preclude EGSs from offering these options to customers, nor any restriction on EGSs offering products at prices above the PTC. Thus, we find there is no undue discrimination toward EGSs pursuant to 66 Pa.C.S. § 1502, nor any direct or indirect rate regulation in contravention of the Choice Act.

These facts are critical and undercut the suggestions made by Opposing Parties that the Settlement will result in the "destruction" of the retail market. They also differentiate the Settlement from the Maryland example utilized by the Opposing Parties. As alleged by the Opposing Parties, Maryland experienced a sharp reduction in the number of EGS offerings and market participation after making wholesale changes to its retail market. However, the changes in Maryland went much further than the narrowly tailored proposal here. Maryland ended UCB services to third-party suppliers for

residential accounts and also ended all residential purchases of third-party supplier receivables. *See* Maryland Public Service Commission, Administrative Docket No. PC 65 (Order issued April 28, 2026).³² Here, as noted above, the Settlement preserves UCB and POR for DSP VII, rendering the Maryland example distinguishable from the present case, and therefore, unpersuasive to our decision.

We also note that the Opposing Parties failed to offer any comparison of the Maryland retail market and Pennsylvania retail market to make their usage of the example more useful. This comparison is critical given both the differences in the steps taken and the different legal frameworks supporting the retail markets in each state.

Finally, the Commission is persuaded by the fact that no system changes are necessary to implement the POR changes, and that the Company will not incur material implementation costs because EGS pricing for POR eligibility, and attestation of affirmative customer consent, will be processed through electronic data interchange transactions. FirstEnergy St. 1-R at 13. The ending of the clawback mechanism will also reduce the administrative burden on FirstEnergy.

For the reasons outlined above, and consistent with the record and discussion above, we shall approve the Settlement's proposed POR rules. In doing so, we find the amended POR rules are appropriately measured and targeted to address substantial evidence of harm and preserve POR and UCB eligibility for suppliers who wish to have guaranteed payment and alleviation of collections costs, while protecting residential and commercial customers from the payment of excessive collections costs associated with higher-than-PTC EGS pricing.

³² Available at: https://psc.maryland.gov/wp-content/uploads/2026/04/Order_SB1-Res-Cessation-of-POR-PC65.pdf (Last accessed, 10/1/2026).

Accordingly, we shall deny the EGS Parties' Exception No. 1, Town Square and WGL's Exception Nos. 3 and 4, and RESA's Exception Nos. 1 through 4, as they relate to this issue, and adopt the ALJs' recommendation.

VI. Conclusion

For the reasons set forth above, we shall approve the Joint Petition for Non-Unanimous Settlement, as modified by this Opinion and Order. Additionally, we shall: (1) grant, in part, and deny, in part, the Exceptions of the EGS Parties, Town Square and WGL, RESA, and Constellation; (2) deny the Exceptions of CGC, JSA, and Dimension; (3) modify the Recommended Decision of Deputy Chief ALJ Mark A. Hoyer and ALJ Erin L. Gannon; and (3) grant the Joint Petition and approve the Non-Unanimous Settlement, as modified, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy, filed on August 31, 2026, to the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon, issued on August 21, 2026, are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Exceptions of the Customer-Generator Coalition, filed on August 31, 2026, to the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon, issued on August 21, 2026, are denied, consistent with this Opinion and Order.

3. That the Exceptions of Town Square Energy East, LLC and WGL Energy Services, Inc., filed on August 31, 2026, to the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon, issued on August 21, 2026, are granted, in part, and denied, in part, consistent with this Opinion and Order.

4. That the Exceptions of the Solar Energy Industries Association and the Coalition for Community Solar Access, filed on August 31, 2026, to the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon, issued on August 21, 2026, are denied, consistent with this Opinion and Order.

5. That the Exceptions of the Retail Energy Supply Association, filed on August 31, 2026, to the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon, issued on August 21, 2026, are granted, in part, and denied, in part, consistent with this Opinion and Order.

6. That the Exceptions of Dimension PA 1, LLC, filed on August 31, 2026, to the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon, issued on August 21, 2026, are denied, consistent with this Opinion and Order.

7. That the Exceptions of Constellation Energy Generation, LLC and Constellation NewEnergy, Inc., filed on August 31, 2026, to the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon, issued on August 21, 2026, are granted, in part, and denied, in part, consistent with this Opinion and Order.

8. That the Exceptions of the Retail Energy Supply Association, filed on August 31, 2026, to the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon, issued on August 21, 2026, are granted, in part, and denied, in part, consistent with this Opinion and Order.

9. That the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon, issued on August 21, 2026, is modified, consistent with this Opinion and Order.

10. That the Joint Petition for Non-Unanimous Settlement, filed on July 2, 2026, by FirstEnergy Pennsylvania Electric Company, the Office of Consumer Advocate, the Office of Small Business Advocate, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, Walmart, Inc., and Duquesne Light Company, is approved as modified by this Opinion and Order.

11. That the Joint Petition for Non-Unanimous Settlement is modified by removing the following paragraph, and any other associated provisions or references thereto included in the Joint Petition for Non-Unanimous Settlement:

66. As shown in FE PA Exhibit CDL-4, EGSs entering into new contracts with residential customers after June 1, 2027, must return those residential customers to default service at the conclusion of the fixed duration contract term absent an affirmative choice to remain with the EGS in response to the notices required by the Commission's regulations at 52 Pa. Code § 54.10. In addition, commencing June 1, 2027, EGSs will be required to provide an attestation of affirmative customer consent on a quarterly basis for all residential customers on variable-priced month-to-month products.

12. That FirstEnergy Pennsylvania Electric Company's proposed Default Service Program VII, for the period June 1, 2027 through May 31, 2031, be approved, as modified by the Joint Petition for Non-Unanimous Settlement and this Opinion and Order; and the Parties be directed to comply with the terms of the Joint Petition for Non-Unanimous Settlement, as modified by this Opinion and Order, as though each term and condition stated therein had been the subject of an individual ordering paragraph.

13. That CRA International, Inc. d/b/a/ Charles River Associates be approved as the independent third-party evaluator for FirstEnergy Pennsylvania Electric Company's default service procurements.

14. That FirstEnergy Electric Company be permitted to file a tariff and tariff supplements to become effective upon at least one day's notice.

15. That FirstEnergy Pennsylvania Electric Company's request for a waiver of the Commission's regulations at 52 Pa. Code §§ 54.182 and 54.187 be granted to the extent that is necessary to permit the Company to: (1) continue to procure generation for three procurement classes and implement the maximum registered peak load provisions of the Settlement; (2) continue semi-annual rate adjustments and reconciliation for the commercial class under the PTC Rider and semi-annual reconciliation of HP Rider over/under collections for the industrial class; and (3) continue to recover the non-market based charges through the non-bypassable DSS Rider rather than the PTC Rider.

16. That FirstEnergy Pennsylvania Electric Company's request for a waiver of the Commission's regulation at 52 Pa. Code § 54.10(3) is rendered moot, consistent with this Opinion and Order.

17. That the non-settling parties' claims and recommendations regarding FirstEnergy's procurement and implementation plan, classification of non-residential default service customers, rate design and cost recovery, Customer Referral Program, and supplier tariff changes related to the Company's Purchase of Receivables Program are denied.

18. That the Retail Energy Supplier Association's request that the Commission re-examine costs included in FirstEnergy Pennsylvania Electric Company's default service rates is denied.

19. That a copy of this Opinion and Order be served on the Director of the Commission's Office of Competitive Market Oversight.

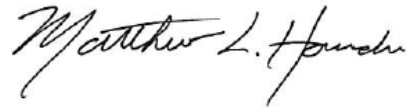
20. Consistent with Paragraph 78 of the Joint Petition for Non-Unanimous Settlement, any Joint Petitioner may elect to withdraw from the Settlement by written notice filed with the Secretary of the Commission and service upon all Joint Petitioners within five (5) business days after entry of the Commission's 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.

21. That following the expiration of the withdrawal period set forth in Ordering Paragraph 19, and absent a withdrawal, the Joint Petition for Non-Unanimous Settlement is deemed approved as modified by this Opinion and Order, and FirstEnergy Pennsylvania Electric Company is directed to make all compliance filings necessary for the implementation of its Default Service Program.

22. That upon acceptance and approval by the Commission of the tariff and tariff supplements filed by FirstEnergy Pennsylvania Electric Company, consistent with this Opinion and Order, this proceeding shall be marked closed.

23. That the Commission's Office of Competitive Market Oversight conduct an expedited paper proceeding to review the issues identified by the Joint Petitioners within the retail electric marketplace on a statewide basis, consistent with this Opinion and Order. This review will be separately docketed, and OCMO shall provide any recommendations it deems appropriate to the Commission by June 1, 2027, consistent with this Opinion and Order.

BY THE COMMISSION,

A handwritten signature in black ink, reading "Matthew L. Homsher". The signature is written in a cursive, flowing style.

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: October 22, 2026

ORDER ENTERED: October 26, 2026

VII. List of Abbreviations

Abbreviation	Meaning
5CP	Five coincident peaks
Act 129	Act 129 of 2008
AEC	Alternative Energy Credit
AEPS	Alternative Energy Portfolio Standards Act
ARR	Auction Revenue Rights
ATSI	American Transmission Systems, Inc.
BRA	Base residual auction
C&I	Commercial and industrial
CAP	Customer Assistance Program
CAUSE-PA	Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania
CGC	Customer Generator Coalition
Commission	Pennsylvania Public Utility Commission
Constellation	Constellation Energy Generation, LLC and Constellation NewEnergy, Inc.
CPP	Capacity Proxy Price
CRA	CRA International, Inc. d/b/a Charles River Associates
CRP	Customer Referral Program (referred to by RESA as the Standard Offer Customer Referral Program)
DCA	Descending clock auction
Dimension	Dimension PA 1, LLC
DER	Distributed energy resource
DLC	Duquesne Light Company
DG	Distributed generation
DOE	United States Department of Energy
DRIPE	Demand reduction induced price effects
DSP	Default Service Program (also Default Service Plan)
DSP VI	Sixth default service program (June 1, 2023 – May 31, 2027)
DSP VII	Seventh default service program (June 1, 2027 – May 31, 2031)

Abbreviation	Meaning
DSS	Default Service Support
EDC	Electric Distribution Company
EGS	Electric Generation Supplier
EGS Parties	Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy
ELCC	Effective load carrying capability
FE PA, FirstEnergy (or Company)	FirstEnergy Pennsylvania Electric Company
FERC	Federal Energy Regulatory Commission
FPFR	Fixed-price full-requirements
FPL	Federal Poverty Level
FTR	Financial Transmission Rights
HP Rider	Hourly Pricing Default Service Rider
HPS	Hourly pricing service
Industrial Customer Groups	Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and West Penn Power Industrial Intervenors
Joint Petition (or Settlement)	Joint Petition for Non-Unanimous Settlement
Joint Petitioners	FE PA, the OCA, the OSBA, CAUSE-PA, Walmart, and DLC, collectively
JSA	Joint Solar Advocates (Coalition for Community Solar Access and Solar Energy Industries Association)
kW	Kilowatt(s)
kWh	Kilowatt-hour(s)
LIHEAP	Low-Income Home Energy Assistance (Program)
LMP	Locational marginal price
LSE	Load serving entity
Met-Ed (or ME)	Metropolitan Edison Company
MAIT	Mid-Atlantic Interstate Transmission, LLC
MRPL	Maximum Registered Peak Load
MW	Megawatt(s)
NITS	Network Integration Transmission Service

Abbreviation	Meaning
NMB charges	Non-market-based charges
NSPL	Network Service Peak Load
OCA	Office of Consumer Advocate
OSBA	Office of Small Business Advocate
PCAP (or CAP)	Pennsylvania Customer Assistance Program
Penelec (or PE)	Pennsylvania Electric Company
Penn Power (or PP)	Pennsylvania Power Company
Penn Renewables	Penn Renewables LLC
PJM	PJM Interconnection, L.L.C.
PLC	Peak Load Contribution
POR	Purchase of Receivables
PSU	The Pennsylvania State University
PTC	Price to Compare
PTC Rider	Price to Compare Default Service Rider
PULP	Pennsylvania Utility Law Project
PV	(Solar) Photovoltaic
RESA	Retail Energy Supply Association
RTEP	Regional Transmission Expansion Plan
SMA	Supplier Master Agreement
SOP	Standard Offer Program
SPLI	Supply Peak Load Impact
SPVRC	Solar Photovoltaic Requirements Charge
TOU	Time of Use
Town Square (or TSE)	Town Square Energy East, LLC
UCB	Utility consolidated billing
USAC	Universal Service Advisory Committee
USECP	Universal Service and Energy Conservation Plan
Walmart	Walmart, Inc.
West Penn (or WP)	West Penn Power Company
WGL	WGL Energy Services, Inc.