PULP
PENNSYLVANIA
UTILITY LAW PROJECT

November 10, 2026

Via E-File

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

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

Secretary Homsher:

Please find the attached copy of the **Petition for Reconsideration and/or Modification of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** in the above noted proceeding.

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

Respectfully submitted,



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CC: Deputy Chief Administrative Law Judge Mark A. Hoyer (via email mhoyer@pa.gov)
Administrative Law Judge Erin L. Gannon (via email egannon@pa.gov)
Office of Special Assistants (OSA) (via email ra-OSA@pa.gov)
Certificate of Service

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Certificate of Service

I hereby certify that I have this day served copies of the **Petition for Reconsideration and/or Modification of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54.

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Date: November 10, 2026

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PETITION OF

THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA

FOR RECONSIDERATION AND/OR MODIFICATION OF THE COMMISSION'S OCTOBER 26, 2026 ORDER

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November 10, 2026

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I. INTRODUCTION

Pursuant to the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (Commission), 52 Pa. Code §§ 5.41 and 5.572, the Coalition for Affordable Utility Services and Energy Efficiency (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, hereby petitions the Commission for reconsideration and/or modification of its October 26, 2026 Order (Order).

The Commission's decision within the Order to reject the critical consumer relief outlined in Paragraph 66 of the Joint Petition for Non-Unanimous Settlement (herein Settlement), and to instead refer the litigated issue to the Commission's Office of Competitive Market Oversight (OCMO) to conduct an undefined "paper proceeding", constitutes an error of law that must be reversed.[1] As explained herein, the Commission's decision lacks substantial evidence, violates due process, and fails to remedy a mountain of unrebutted evidence of harm to the health, safety, and economic stability of low income customers in FirstEnergy Pennsylvania's (FE PA) service territory.

The evidence in this proceeding demonstrates that the current rules in FE PA's service territory allowing retail electric generation suppliers (EGSs) to impose new terms at the end of their contract period, without affirmative consent to those terms, has resulted in significant and pervasive economic harm to residential customers served by an EGS over an extended period. The record shows that this pervasive economic harm was not uniform, and in fact disproportionately impacted FE PA's low income customers – causing a cascade of other consequences to the health,

[1] Petition of FirstEnergy Pennsylvania Electric Company for Approval for Its Default Service Program for the Period of June 1, 2027 to May 31, 2027, Docket No. P-2026-3060298 (Opinion and Order entered October 26, 2026) (herein Order) at 167.

safety, and wellbeing of economically vulnerable households. Specifically, the record contains unrefuted evidence of the following:

- Residential shopping customers have been charged over $888 million more than the applicable price to compare over a 100-month period, from August 2017 through December 2025.[2]

- Confirmed low income (CLI) shopping customers were consistently charged hundreds of dollars more compared to other residential shopping customers, and over a thousand dollars more than the default service price.[3] Specifically, on an average per customer basis from 2022 through 2025, across all four divisions, confirmed low income shopping customers were charged a price premium between 31-42% above the default service price, while confirmed low income shopping customers were charged a price premium as high as 56% above the applicable default service price.[4]

- Excessive charges in the competitive market are driving substantially higher rates of involuntary termination and uncollectible expenses, which in turn drives up rates for all residential customers.[5]

    - In 2025, termination rates for residential shopping customers ranged between 14-22% across FE PA's four divisions, compared to just 1-3% for residential default service customers.[6]

    - On a per customer basis, shopping related uncollectible expenses were more than two times higher in Met-Ed and West Penn divisions and more than three times higher in Penelec and Penn Power divisions, as compared to default service uncollectible expenses.[7]

    - Average uncollectible expenses associated with shopping accounts across FE PA's four rate districts ranged between $23-38 per customer in 2025, compared to $8-$15 per customer for uncollectible expenses associated with default service accounts.[8]

- Low income customers in FE PA's service territory "are economically vulnerable and unable to pay for essential services like electricity without substantial and meaningful assistance."[9]

[2] CAUSE-PA St. 1 at 16-17 & Exhibit 1.
[3] CAUSE-PA St. 1 at 23.
[4] CAUSE-PA St. 1 at 19-21 & Exhibits 2 & 3.
[5] CAUSE-PA St. 1-R at 17-18; CAUSE-PA Exhibit 1-R.
[6] CAUSE-PA St. 1 at 24, T.7.
[7] CAUSE-PA St. 1-R at 17-18, CAUSE-PA Exhibit 1-R.
[8] CAUSE-PA St. 1-R at 17-18, CAUSE-PA Exhibit 1-R.
[9] CAUSE-PA St. 1 at 14

- In FE PA's service territory, an estimated 23.6% (426,858) residential customers have income at or below 150% of the federal poverty level, and 240,509 have been confirmed by the Company to have income at or below this level.[10]

- FE PA's low income customers face profound energy insecurity, defined as the inability to afford home energy service, which threatens stable and continued housing, employment, and education; has substantial long-term impacts on mental and physical health; creates serious risks to the household and the larger community; and negatively impacts the greater economy.[11]

- Low income households grappling with energy insecurity are regularly forced to choose between critical necessities each month, including food, water, heat, housing, medicine, and medical care.[12]

This unrebutted record evidence was foundational to the remedies constructed in the Settlement, including the provisions ensuring residential and low income consumers provide affirmative consent before an EGS may unilaterally impose new rates following expiration of the customer's initial contract term – or, in the case of variable rates, on a quarterly basis. Importantly, this evidence was also explicitly accepted by the ALJs, included in the Recommended Decision's Findings of Fact, and upheld in the Commission's Order.[13]

The Commission's decision to refer the issue to a statewide policy proceeding was based on its speculative conclusion that excessive charges in the residential competitive market may be driven by a desire of some customers to choose higher rates.[14] This conclusion overlooks the substantial record evidence that low income shopping customers in FE PA's service territory are facing disproportionately excessive rates and, in turn, disproportionately harmful impacts to the health, safety, and wellbeing of themselves and their families, clearly disproving the contention that low income customers are voluntarily choosing higher rates for any reason. In overlooking

[10] CAUSE-PA St. 1 at 12, T. 1.
[11] CAUSE-PA St. 1 at 11-14.
[12] CAUSE-PA St. 1 at 12.
[13] Order at 162-165; RD at 31-37, 194-200, 208-209
[14] Order at 162-163.

this substantial record evidence of harm, the Commission improperly denied relief to FE PA's economically vulnerable customers. Indeed, there is no support in the record for the conclusion that low income consumers voluntarily choose to forego food, medicine, and medical care – or would otherwise rather face involuntary termination – in order to pay for value added goods and services, or purchase energy at higher rates because the products are renewable.

CAUSE-PA urges the Commission to reconsider its Order rejecting Paragraph 66 of the Settlement, as its decision referring this matter to an undefined policy proceeding facilitated by OCMO errs as a matter of law. In the alternative, if the Commission declines to reconsider its decision to reject the critical relief contained in this provision, CAUSE-PA seeks modification of the Order to protect the due process rights of CAUSE-PA and its members. At a minimum, and as described in further detail below, CAUSE-PA asserts that if the Commission refers this matter to a separate proceeding, it must provide the parties with the same level of due process afforded in the instant matter. Anything less than an on-the-record evidentiary proceeding that results in a final appealable order would fall short of due process requirements and would undermine the Commission's express intent to "conduct[] a more comprehensive and diligent review."[15]

CAUSE-PA's request for reconsideration and modification is based on the following grounds:

- The Commission's Order errs as a matter of law by declining to approve the relief in Paragraph 66, as its decision is unsupported by substantial evidence and disregards substantial unrebutted evidence demonstrating ongoing and disproportionate harm to low income shopping customers in FE PA's service territory.

- The Commission's Order errs as a matter of law by declining to adjudicate issues properly before it and instead referring those issues to an informal and undefined process that neither meets the standards for constitutional and statutory due process nor permits development of a further evidentiary basis to resolve those issues.

[15] Order at 164.

In support thereof, CAUSE-PA asserts the following:

II. BACKGROUND

1. On February 3, 2026, FE PA filed the captioned Joint Petition (DSP VII Petition) requesting that the Commission approve its seventh default service programs (Program or DSP VII) for the period June 1, 2027 through May 31, 2031 in accordance with the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801 *et seq.* (Choice Act).

2. FE PA's Petition, and the provisions contained therein, was designed to satisfy FE PA's obligations to furnish adequate and reliable service to default service customers at the least cost over time by procuring a prudent mix of long-term, short-term and spot market generation supplies. In addition to the default service procurement proposals, FE PA proposed to make several revisions to its retail electric service tariff applicable to customers who are served by an EGS. Specifically, relevant to the issues in this Petition, FE PA proposed that EGSs entering into new contracts with residential customers after June 1, 2027, must obtain affirmative customer consent before rolling customers into a new contract at the expiration of the initial contract term. Absent such affirmative consent, EGSs would be required to return customers to default service at the conclusion of a fixed duration contract term.[16] In addition, commencing June 1, 2027, EGSs offering a variable rate would be required to obtain affirmative customer consent on a quarterly basis to ensure ongoing consent to remain on a variable rate term.

3. FE PA's Petition was served on the Retail Energy Supply Association (RESA), as well as more than 125 suppliers operating in FE PA's service territory.[17]

[16] FE PA Petition at 18-19, para. 51-52.
[17] See FE PA Petition, Certificate of Service.

4. CAUSE-PA filed a Petition to Intervene on February 10, 2026, was granted intervenor status in the proceeding, and was a full participant in all phases of the litigation, including through the submission of extensive testimony and exhibits, briefing of the contested issues, support of the settlement and replies to exceptions.[18]

5. On July 2, 2026, FE PA, CAUSE-PA, the Office of Consumer Advocate, the Office of Small Business Advocate, Duquesne Light Company, and Walmart (collectively, Joint Settling Parties) filed a Joint Petition for Non-Unanimous Settlement which, in relevant part, contained the following term:

> 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.[19]

In support of this provision, the Joint Settling Parties referenced the unrefuted evidence in the proceeding of economic harm in the proceeding, including the evidence outlined above in the introduction section of this Petition.

6. The Settlement was contested by several parties on the shopping issues, including RESA; Town Square Energy East, LLC (TSE or Town Square) and WGL Energy Services, Inc. (WGL); and Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy (together, EGS Parties). Main and Reply Briefs were filed on all contested issues, including those contained in Paragraph 66.

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[18] *See* Order at 6-9

[19] Settlement at ¶ 66. FE PA Exhibit CDL-4, attached to FE PA's Petition, constituted the revised pages of FE PA's Electric Generation Supplier Coordination Tariff. The relevant sections of which are contained in Section 5.4.4 of Exhibit CDL-4.

7. On August 21, 2026, Administrative Law Judges Hoyer and Gannon (ALJs) issued a Recommended Decision (RD), recommending that the Commission approve the Settlement without modification.[20] Specifically, in support of their recommendation approving the critical consumer protections contained in Paragraph 66 of the proposed Settlement, the ALJs concluded that the proposals contained therein were reasonable, narrowly tailored, supported by substantial record evidence, and consistent with the Choice Act – remediating actual harm to consumers, as proven by substantial record evidence, while preserving direct access to the market.[21]

8. The ALJs also explicitly found FE PA's request for temporary waiver of Section 54.10(3) of the Commission's regulations – to the extent such waiver is necessary – was justified by the record evidence and met the requisite standard for regulatory waiver.[22] Importantly, the ALJs concluded that regulatory waiver was not necessary to effectuate the proposal requiring quarterly customer affirmation to remain on a variable rate.[23]

9. The ALJs rejected arguments that a statewide proceeding was required, reasoning that default service proceedings, their retail programs, and supplier coordination tariffs are all EDC-specific.[24] The ALJs emphasized that the record evidence *in this proceeding* demonstrated harm to FE PA'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 – and that low income shopping customers were charged disproportionately higher rates compared to other residential shopping customers.[25] The ALJs also rejected unsupported arguments of the supplier intervenors that the PTC is not a meaningful or objective benchmark, reasoning that the PTC is meaningful because it

[20] Order at 8.
[21] Order at 121, 157-158 (citing RD at 199, 208).
[22] Id.
[23] Order at 157.
[24] Id. (citing RD at 197).
[25] Id. at 123-124 (citing RD at 198-199)

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.[26] 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.[27]

10. Exceptions to the RD were filed by the EGS Parties, RESA, Town Square and WGL, and Replies to Exceptions were filed by CAUSE-PA, the OCA, and FE PA.[28]

11. At the Public Meeting held on October 22, 2026, upon a Motion by Chairman Stephen M. DeFrank, the Commission voted 3-2 – over the dissent of Vice Chair Barrow and Commissioner Zerfuss – to modify the Settlement by eliminating the relief contained in Paragraph 66.[29]

12. Chairman DeFrank's Motion reads, in relevant part:

> **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

[26] Order at 123.
[27] Id. at 124 (citing RD at 198-199).
[28] In addition, as outlined in the Commission's Order on August 31, 2026, a non-party Spark Energy, LLC (Spark) filed a Petition seeking approval to intervene in the proceeding and file exceptions or to be able to file exceptions as a non-party. Order at 8. On September 1, 2026, CAUSE-PA filed Preliminary Objections and a Request for Expedited Relief to dismiss Spark's Exceptions. The Commission issued a Secretarial Letter on September 4, 2026 denying Spark's Petition for Intervention and struck Spark's Exceptions from consideration as a non-party and denied as moot CAUSE-PA's Preliminary Objections. On September 11, 2026, Spark filed a Petition for Reconsideration of staff action which was denied by the Commission on October 1, 2026. Order at 8-9.

In addition, on October 7, 2026, another non-party - UGI Energy Services, LLC (UGIES) - filed a letter to the docket which were arguments as to why the Commission should deny the Settlement provisions dealing with supplier issues, including those addressed in Paragraph 66 of the Settlement. In its Order, the Commission specifically stated that it "will not consider the letter because it was late-filed, and UGIES is not a party of this proceeding." Order at 9, n.5.
[29] Petition of FirstEnergy Pennsylvania Electric Company for Approval of a Default Service Program. Docket No. P–2026-3060298, Motion of Chairman Stephen M. DeFrank. (DeFrank Motion).

expires, 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.

While the claims on the record here do raise obvious concerns, I am hesitant to make such profound revisions at this time in the retail electric marketplace of a single EDC. First, Section 54.10 of the Commission's regulations underlies the existing market rules applicable to these circumstances, permitting EGSs to retain customers upon contract expiration after proper notice. Second, I am unable to ascertain the root cause of the increased costs highlighted in the Settlement. Third, I question whether it is appropriate to make this modification in a single service territory or if such a determination is best implemented universally across the state, for instance, via rulemaking. Therefore, I am interested in conducting a more comprehensive and diligent review of this issue to ascertain what portion of the costs noted on the record here are the result of customers choosing value-added products, renewable products, long-term fixed rates products, time-of-use, or other types of products versus those costs that were manifested due to customer 'decision inertia.' As well, should retail market modifications be needed, I am interested in determining how best to implement those modifications.

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

Since the Settlement includes provisions in direct contrast to existing regulations, the parties also seek a waiver of the Commission's regulations at Section 54.10(3) for the time-period that FirstEnergy's DSP VII is in effect. As noted above, this regulation addresses what happens when an electric supply contract expires and permits EGSs to retain customers upon contract expiration after providing proper notice. Since I propose to remove the aforementioned provisions from Paragraph 66 of the Settlement, I would also propose to render the associated waiver request as moot.[30]

[30] DeFrank Motion at 2-3.(emphasis added) (internal footnotes and citations to authority omitted).

13. Vice Chair Barrow and Commissioner Zerfuss dissented from this motion. Vice Chair Barrow noted, among other things, that she would have accepted Paragraph 66 because "[t]he record evidence supports granting First Energy's request" noting the specific record evidence of harm to all customers, in particular low income customers.[31] She further observed that while she has been "advocating for the Commission to convene another retail market investigation, that particular horse has left the barn in that the largest electric distribution company in the state is not asking for relief that such an investigation could deliver." She also noted that "I see no reason to deny First Energy's proposal when a substantial record from a litigated proceeding is already before us; doing so would be a waste of Commission resources."[32]

14. In her dissent, Commissioner Zerfuss similarly expressed concern about not squarely addressing these issues indicating the record fully support the provisions of Paragraph 66 and stated "that the question is not whether more can be learned, but whether there is sufficient evidence to approve these protections."[33] As Commissioner Zerfuss noted, the safeguards in Paragraph 66 "preserves customer choice while adding an important safeguard, particularly for our most vulnerable customers."[34] Citing to the Commonwealth Court's decision in *Retail Energy Supply Association v. Pennsylvania Public Utility Commission*, that competition must be reconciled with the Act's protections for access and affordability, Commissioner Zerfuss aptly noted the following:

> The same reasoning applies with equal force in this case: protecting customer choice does not require the Commission to leave documented affordability concerns unaddressed. The record of residential customers paying above the PTC supports requiring an affirmative decision at the expiration of a covered fixed-rate term. The settlement preserves customers' supplier options rather than foreclosing

[31] Petition of FirstEnergy Pennsylvania Electric Company for Approval of a Default Service Program. Docket No. P–2026-3060298, Statement of Vice Chair Kimberly Barrow at 2 (Barrow Statement).
[32] Barrow Statement at 2.
[33] Petition of FirstEnergy Pennsylvania Electric Company for Approval of a Default Service Program. Docket No. P–2026-3060298, Statement of Commissioner Kathryn L. Zedrfuss at 1 (Zerfuss Statement).
[34] Zerfuss Statement at 2.

> them. This measure in no way prevents the residential customer from affirming consent to stay with the same EGS or to switch to another EGS instead of returning to the default supplier. Nor does it prevent a customer from selecting niche plans (such as green plans) even if those plans come with a higher monthly bill.
>
> The measure is also wholly consistent with the statutory text, which preserves the customer's "ultimate choice" and requires direct oral confirmation or "written evidence of the customer's consent" to a supplier change. The contract contemplated by the settlement provides just that consent, with another opportunity to choose at expiration. Waiving the regulatory requirement of automatic renewal preserves informed choice while addressing the affordability concerns in FirstEnergy's territory, which includes nearly two million residential customers.[35]

15. On October 26, 2026, the Commission issued its Order in the instant case adopting Chairman DeFrank's motion almost verbatim as its reasoning for rejecting Paragraph 66 of the Settlement.[36] In relevant part, the Commission found:

> 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 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

[35] Zerfuss Statement at 2-3 (Internal citations to authority omitted).
[36] Compare Order at 163-165 with DeFrank Motion at 2-3.

> June 1, 2027, whether that be via a proposed rulemaking, order, advisory memo, report, or any other transmittal deemed appropriate.[37]

16. It is to this matter that CAUSE-PA seeks reconsideration and/or modification of the Commision's Order.

III. LEGAL STANDARDS

A. *Standard for Review*

17. The Commission has articulated its standard for granting reconsideration or clarification of a Commission order:

> A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(f), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. . . .What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.[38]

18. Where a party alleges an error of fact or law, a Petition for Reconsideration is properly raised and may properly be granted.[39]

19. CAUSE-PA's request for reconsideration and/or modification outlined in this Petition satisfy *Duick*, in that the Petition raises substantive, procedural, and evidentiary issues which appear to have been overlooked by the Commission and identifies errors of law and fact that must be addressed.

B. *Substantial Evidence*

20. In any proceeding, the Commission's decision must be supported by substantial evidence.[40] "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate

[37] Order at 163-164.
[38] Duick v. Pennsylvania Gas and Water Company, 56 Pa. P.U.C. 553, 559 (1982).
[39] Application of Cressona Trucking Company, Petition for Reconsideration, 1989 Pa. PUC LEXIS 102 (Pa. PUC, 1989).
[40] 2 Pa. C.S. § 704.

to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact that is sought to be established.[41]

C. *Due Process Standards*

21. The Commission, as an administrative body, is bound by the due process provisions of constitutional law and the principles of common fairness.[42] Due process requires notice and a meaningful opportunity to be heard on the issues.[43]

22. In determining if a violation of procedural due process has occurred, the Court must consider whether due process is required and, if so, what type of process is due.[44]

23. Procedural due process applies when an administrative agency takes administrative action that "is adjudicatory in nature and involves substantial property rights."[45]

24. An administrative action is an adjudication if the outcome will affect "the rights, duties, and obligations" of utility customers.[46]

25. The type of process due is determined by considering the private interest at stake, the value of additional procedural safeguards, and the government's interest in proceeding without providing such procedures.[47] "[D]ue process is flexible and calls for such procedural protections as the particular situation demands."[48] "The fundamental requirement of due process is the opportunity

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[41] Norfolk & W. Ry. Co. v. Pa. PUC, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa. Super. 1961); Pa. Dep't of Pub. Welfare, White Haven Ctr., 480 A.2d 382 (Pa. Cmwlth. 1984).
[42] Bridgewater Borough v. Pennsylvania Public Utility Commission, 124 A. 2d 165 (Pa. Super. Ct. 1956); McCormick v. Pennsylvania Public Utility Commission, 30 A. 2d 327 (Pa. Super. Ct. 1943); Paradise v. Pennsylvania Public Utility Commission, 132 A. 2d 754 (Pa. Super. Ct. 1957).
[43] Popowsky v. Pa. PUC, 805 A.2d 637, 643 (Pa. Commw. Ct. 2002); Smith v. PA. PUC, 192 Pa. Superior Ct. 424 (1960).
[44] Popowsky v. Pa. PUC, 805 A.2d 637, 643(Pa. Commw. 2002); Smith v. PA. PUC, 192 Pa. Superior Ct. 424 (1960); Evans v. Pa. PUC, 2021 Pa. Commw. Unpub. LEXIS 519, *24, 264 A.3d 833 (Commw. Ct., 2021).
[45] Conestoga Nat'l Bank of Lancaster v. Patterson, 275 A.2d 6, 9 (Pa. 1971) (citation omitted).
[46] AT&T Communications of Pa., Inc. v. Pa. PUC, 570 A.2d 612 (Pa. Commw. Ct. 1990).
[47] Pa. Coal Mining Ass'n v. Ins. Dep't, 471 Pa. 437, 370 A.2d 685, 691 (Pa. 1977) (citing Mathews v. Eldridge, 424 U.S. 319, 334-35, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)).
[48] Id. (internal quotation marks omitted) (alteration in original).

to be heard at a meaningful time and in a *meaningful manner*."[49] The level of process required is determined by weighing the private interest at stake, the risk of erroneous deprivation, and the government interest.[50]

26. Where Commission action is adjudicatory in nature and affects substantial property or contractual rights of affected parties, the process afforded must be adequate to that interest.[51] While this inquiry is fact-specific, the Commonwealth Court has previously concluded that a notice and comment proceeding was constitutionally insufficient where the Commission's action was adjudicatory in nature and affected the cost consumers pay for energy.[52]

27. The Administrative Agency Law provides that "[N]o adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard. All testimony shall be stenographically recorded and a full and complete record shall be kept of the proceedings," and "[r]easonable examination and cross-examination shall be permitted."[53]

[49] Mathews, 424 U.S. at 333 (emphasis added) (internal quotation marks omitted).
[50] Id.
[51] Barasch v. Pa. PUC, 546 A.2d 1296, 1305 (Pa. Commw. Ct. 1988).
[52] Id.
[53] 2 Pa. C.S. §§ 504, 505.

IV. REQUESTS FOR RECONSIDERATION AND/OR MODIFICATION

28. CAUSE-PA seeks reconsideration and/or modification of the Commission's Order on two express grounds:

- The Commission's Order errs as a matter of law by declining to approve the relief in Paragraph 66, as its decision is unsupported by substantial evidence and disregards substantial unrebutted evidence demonstrating ongoing and disproportionate harm to low income shopping customers in FE PA's service territory.

- The Commission's Order errs as a matter of law by declining to adjudicate issues properly before it and instead referring those issues to an informal and undefined process that neither meets the standards for constitutional and statutory due process nor permits development of a further evidentiary basis to resolve those issues.

A. *The Commission's Order errs as a matter of law by declining to approve the relief in Paragraph 66, as its decision is unsupported by substantial evidence and disregards substantial unrebutted evidence demonstrating ongoing and disproportionate harm to low income shopping customers in FE PA's service territory.*

29. The Commission's decision to reject Paragraph 66 of the Settlement is not supported by substantial record evidence and overlooks substantial unrebutted evidence of harm to low income shopping customers in FE PA's service territory. By deferring the matter to OCMO to conduct an undefined paper proceeding, and vesting OCMO with the sole discretion as to the pathway for future relief, the Commission is depriving CAUSE-PA and its members of relief from actual harm established on the record.

30. It is well settled that Commission decisions cannot be arbitrary or capricious and must be supported by substantial record evidence.[54] The Commission may supersede an ALJ's recommended decision, but only with a contrary finding that is itself supported by substantial evidence – not by simply declaring itself unable to determine causation while disregarding the

[54] 2 Pa. C.S. § 704; Norfolk & W. Ry. Co. v. Pa. PUC, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa. Super. 1961); Pa. Dep't of Pub. Welfare, White Haven Ctr., 480 A.2d 382 (Pa. Commw. Ct. 1984).

ALJ's explicit causal findings.[55] If the Commission modifies an ALJ's recommended decision, it must make additional findings of fact and articulate the factors it considered and the weight given to the evidence to enable meaningful appellate review.[56]

31. The Commission's Order neither rejects nor disputes the ALJs' findings concerning the cause and consequences of the pervasive harm that has occurred to customers served by retail suppliers over a more than 100-month period.[57] In fact, in approving other provisions of the Settlement involving retail choice, the Commission relied on the specific evidence of harm that excessive supplier pricing has had on producing "adverse outcomes for First Energy customers."[58] Regarding its decision to accept FE PA's modifications to its POR program, the Commission reiterated its authority to "bend" competition under the Choice Act to address "important concerns," and specifically cited the "documented concerns about the excessive levels of residential generation uncollectible expense attributable to purchase of EGS accounts receivable" as a basis for its decision.[59] In short, the Commission accepted the same evidence of consumer harm when approving other relief, yet it failed to explain why that evidence did not support the critical relief in Paragraph 66.

32. Nowhere in the Commission's order does it reject, discount, or otherwise question the substantial evidence of harm to residential and low income customers documented over a 100-month period, the extensive data documenting higher termination rates, uncollectible expenses, and customer complaints, or the well-documented evidence of disproportionate harm to confirmed

[55] Duquesne Light Co. v. Pa. PUC, 643 A.2d 130 (Pa. Commw. Ct. 1994).
[56] See Greene Twp. Bd. of Sup'rs v. Pa. PUC, 642 A.2d 541 (Pa. Commw. Ct. 1994); see also ARIPPA v. Pa. PUC, 792 A.2d 636 (Pa. Comm. Ct. 2002).
[57] Order at 121, RD at 199.
[58] See Order at 113 (citing evidence provided by CAUSE-PA and OCA that a "significant number of CRP customers end up with contract prices in excess of the applicable PTC" as a basis for approving FE PA's proposal to not continue the Customer Referral Program).
[59] Order at 188-189 (citing Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. Pa. PUC, 120 A.3d 1087, 1102 (Pa. Commw. Ct. 2015).

low-income customers that has occurred as a result of excessive supplier pricing and the attendant policies that undermine authentic consumer choice.[60] Nor does the Order identify contrary evidence undermining the ALJs' findings.

33. As outlined by the Commission in its Order, and as summarized above, the record contains the following unrefuted facts, which were accepted by the ALJs in the proposed Findings of Fact[61] and incorporated in their analysis:

- 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.[62]

- 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.[63]

- The uncollectible-expense evidence likewise supports the adoption of Paragraph 66, further underscoring the direct nexus between excessive prices and harm to consumers. In 2025, shopping-related uncollectible expenses were more than 2x higher in Met-Ed and West Penn and more than 3x higher in Penelec and Penn Power compared to default service uncollectible expenses.[64] On a per-customer basis, POR-related uncollectible expenses ranged between $23-$38, compared to $8-$15 for default service uncollectible expenses.[65] These disproportionately higher uncollectible expenses are <u>not</u> absorbed by suppliers; they are recovered from customers.[66]

- The record also demonstrated disproportionate harm to low income households. Confirmed low income shopping customers were consistently charged substantially higher premiums than other residential shopping customers – ranging between 37-56% above the applicable default service rate.[67] These customers are least able to absorb excessive energy costs, and face severe consequences to their health, safety, and

[60] CAUSE-PA MB at 8-12; CAUSE-PA RB at 17-19, 25-28; RD at 165-67, 198-99.
[61] RD at 31-35, 194-199 (Finding of Fact 91-99, 106-107).
[62] CAUSE-PA MB at 8-9; CAUSE-PA RB at 17, 26-27; RD at 198.
[63] CAUSE-PA MB at 9, 22; CAUSE-PA RB at 17; RD at 166, 198.
[64] CAUSE-PA RB at 6-7, 17; CAUSE-PA St. 1-R at 17-18.
[65] CAUSE-PA MB at 9; CAUSE-PA RB at 37-38; RD at 227.
[66] CAUSE-PA MB at 9-10, 24-26; RD at 227-29.
[67] CAUSE-PA MB at 8-10; CAUSE-PA RB at 14-15.

> wellbeing when they cannot afford to pay, yet they experienced some of the most pronounced adverse outcomes identified in this proceeding.[68]

34. Although the Commission acknowledged the "obvious concerns" raised by this extensive record evidence, it rejected Paragraph 66 based on speculation that some customers may have knowingly chosen higher-priced products and services. The Commission does not cite to any record evidence to support this supposition, nor does it provide any rationale for overturning the ALJs' findings that excessive supplier pricing, and the resulting high rates of termination and uncollectible expenses, are causally linked to the absence of affirmative customer consent to new rates at the end of a fixed rate contract (or quarterly, in the case of variable rates).[69]

35. The Commission's stated rationale for rejecting Paragraph 66 was two-fold: First, the Commission indicated that it was "hesitant to make such profound revisions at this time in the retail marketplace of a single EDC" and, relatedly, it "question[ed] whether it is appropriate to make this modification in a single service territory or if such a determination is best implemented universally across the state, for instance, through a rulemaking."[70] Second, the Commission indicated that it was "unable to ascertain the root cause of the increased costs highlighted in the Settlement."[71] Neither rationale is supported by the record, and neither justifies overturning the ALJs' findings without explanation or evidentiary support. This constitutes an error of law.[72]

36. Contrary to the Commission's first rationale, the provisions in Paragraph 66 and the associated regulatory waiver request are neither profound nor broad. As the ALJs concluded, these requests were narrowly tailored to remedy harms established by the record in this case, based on

[68] CAUSE-PA MB at 10-14; CAUSE-PA RB at 14-15.
[69] Order at 121-124, 163-164.
[70] Order at 163-164.
[71] Order at 163.
[72] See Duquesne Light Co. v. Pa. PUC, 643 A.2d 130, 132-135 (Pa. Commw. Ct. 1994); see also Greene Twp. Bd. of Sup'rs v. Pennsylvania Pub. Util. Comm'n, 642 A.2d 541 (Pa. Commw. Ct. 1994).

the experience of consumers in FE PA's service territory, and are appropriately designed to not only preserve but also strengthen customer choice.[73] Paragraph 66 does not in any way restrict a customers' ability to choose competitive supply or relieve the obligation of FE PA or an EGS to honor that choice. Rather, the terms in Paragraph 66 address what happens when a customer makes *no affirmative choice* – instead rolling passively onto a rate of the suppliers' choosing.

37. Under Paragraph 66, a customer can freely choose to remain with the same supplier, select another supplier, or return to default service – though continued service on new or changed terms would require the customer's affirmative consent. The current paradigm, by contrast, permits a supplier to impose new rates based solely on the customer's failure to act, substituting the supplier's choice for the customer's. As CAUSE-PA explained through briefing, written disclosure of unknown post-contract terms is not equivalent to affirmative consent[74] Indeed, "*notice is not consent*."[75] By returning customers who make no affirmative election to default service, Paragraph 66 preserves their ability to choose any supplier—including their existing supplier—while ***strengthening*** both consumer protection and informed choice.

38. The Commission's preference for statewide review does not justify withholding record-supported relief for FE PA's low income customers, who are experiencing serious and severe harm now. The evidence in this proceeding concerned supplier conduct and customer harm within FE PA's service territory; accordingly, the Settlement fashioned relief limited to that service territory. The requested waiver was also temporary, extending only through the 2027-2031 DSP term. Paragraph 66 was therefore limited in both scope and duration, while the Commission's referral to an undefined paper proceeding leaves documented harm without an assured remedy.

[73] RD at 199-200.
[74] CAUSE-PA RB at 22.
[75] CAUSE-PA RB at 22; CAUSE-PA St. 1-R at 25-26 (emphasis added).

39. CAUSE-PA submits that the uncertainty inherent in the Commission's decision to defer this matter to an undefined paper proceeding, and the potential foreclosure of timely relief from documented harm to low income customers in FE PA's service territory, contradicts the Commission's obligations under the Choice Act, which requires competition to "bend" when necessary to address "other important concerns" embedded in the Public Utility Code.[76] 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."[77] 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."[78] Withholding timely and certain relief for low income customers from documented harm, based on the record developed in this case, is at odds with this provision of the Choice Act, which obligates the Commission to ensure that there are protections, policies, and services in place to ensure low income customers can afford electric service to their home.

40. The Commission, as an administrative agency, must evaluate material issues presented in an adjudicated proceeding based on specific facts at issue in the record before it, and cannot defer resolution of an adjudicated issue to a separate, undefined, staff-led proceeding that lacks finality merely because it has a policy preference to address the matter statewide.[79] While the Commission may initiate a statewide proceeding to investigate whether similar relief should also be granted

[76] RD at 197-200; CAUSE-PA MB at 20-23; CAUSE-PA RB at 21-26; CAUSE-PA v. Pa. PUC, 120 A.3d at 1101, 1103; 66 Pa. C.S. §§ 2802, 2804, 2807, 2809; RD at 7-8, 245-46.
[77] CAUSE-PA MB at 4; 66 Pa. C.S. §§ 2802 (9)-(10), 2803, 2804 (9), 2807 (d), 2809 (e).
[78] 66 Pa. C.S. § 2802 (9)-(10); CAUSE-PA MB at 5-6.
[79] See 2 Pa. C.S. §§ 504, 505, 507; see also Barasch, 546 A.2d 1296.

statewide, outside the context of this proceeding, it cannot ignore the real and clear harm to customers presented in this case while such a proceeding occurs.

41. The Commission's decision to punt these issues to a separate, undefined process refuses to engage in a meaningful analysis of the detailed record and fails to meaningfully consider ongoing affordability impacts and ongoing harm caused by delay. The reality is that nobody chooses to have their electric service involuntarily terminated, and it strains credulity to suggest that households facing markedly higher termination rates can wait until some undefined time in the future for relief. That is, if relief is ever granted. The Commission's Order vests OCMO with the sole decision of whether and what form relief may take in the future. By declining to decide the issue on the record before it, the Commission committed an error of law and failed to discharge its adjudicatory duty.

42. The Commission's second rationale was based on its summary conclusion that it could not determine from the record why residential and low income customers are paying substantially higher rates for competitive service compared to the default rate. The Commission explained that it is "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."[80]

43. As a threshold matter, nothing in Paragraph 66 would prevent any customer from signing up for value added goods and services, choosing a renewable energy product, signing up for a long term fixed rate product, time of use product or any other product at any price offered by a supplier. There is also no restriction on the price that a supplier could offer at the end of term or through a

[80] Order at 164.

variable rate. Customers would remain free to contract with any supplier at any price for any product, consistent with their legal right to do so under the Choice Act. It would only require that customers affirmatively choose new or changed terms – rather than be placed on new rates or terms through inaction.

44. For customers that willingly choose higher priced or specialized products, Paragraph 66 enshrined and reinforced choice. The safeguards therein apply to customers who make no affirmative choice because of confusion, inattention, or other circumstances and would otherwise be placed on terms selected by the supplier. The Commission's rejection of those safeguards has the effect of ensnaring those who, because of busyness, confusion, or other issues do not make an active choice and are stuck with the offer that their supplier selects on their behalf.

45. The Commission's rejection of Paragraph 66 is unsupported by substantial evidence and overlooks substantial unrebutted evidence of ongoing harm to economically vulnerable customers in FE PA's service territory. By deferring the matter to OCMO without requiring any final action, the order leaves that harm indefinitely unremedied. CAUSE-PA therefore requests that the Commission reconsider and reverse its decision to reject Paragraph 66 of the Settlement.

B. ***The Commission's Order errs as a matter of law by declining to adjudicate issues properly before it and instead referring those issues to an informal and undefined process that neither meets the standards for constitutional and statutory due process nor permits development of a further evidentiary basis to resolve those issues.***

46. As noted above, the Commission justified its rejection of Paragraph 66 by asserting that it could not determine from the record whether the excessive costs borne by residential shopping customers were attributable to customer choice or customer inaction and therefore expressed an interest in conducting a "more comprehensive and diligent review" of those issues.[81] However, the

[81] Order at 164.

Commission's rationale and remedy are fundamentally at odds. Paragraph 66 was litigated in a formal, contested proceeding, and its resolution affects "the rights, duties, and obligations" of FE PA's customers – including the prices they pay for essential electric service and the protections afforded at contract expiration. The issue is therefore adjudicatory in nature and demands process commensurate with that interest.[82] Yet, rather than directing the parties to further develop the record in this case, or initiating a statewide proceeding capable of developing a more comprehensive factual record, the Commission instead referred the matter to an informal, staff-led "paper proceeding" that provides none of the procedural safeguards necessary to resolve disputed issues of fact, including discovery, sworn testimony, cross-examination, witness credibility determinations, or the creation of an evidentiary record. Specifically, the Order states:

> [I]t 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.**[83]

47. The Commission's Order identifies an alleged evidentiary deficiency yet simultaneously directs the matter to a process incapable of curing that deficiency. The stated purpose of the referral is to determine whether excessive charges paid by residential shopping customers are attributable to customer choice, customer inaction, value-added products, renewable-energy products, long-term fixed-rate products, time-of-use products, or other factors. These are disputed factual questions. Yet a paper proceeding before OCMO provides no mechanism to compel the production of evidence, no opportunity to conduct discovery, no sworn testimony, no cross-examination of

[82] See AT&T Communications of Pa., Inc., 570 A.2d 612; Barasch, 546 A.2d at 1305.
[83] Order at 164 (emphasis added).

witnesses, no credibility determinations, and no evidentiary standards governing the evaluation of competing claims.

48. These deficiencies are not merely procedural preferences; they implicate fundamental due process requirements. As discussed above, due process requires notice and a meaningful opportunity to be heard, and the Administrative Agency Law requires that parties be afforded the opportunity for examination and cross-examination where adjudicatory rights are at issue.[84] The Commission's Order provides no assurance that interested parties will be permitted to test factual assertions, challenge unsupported claims, obtain relevant information through discovery, or otherwise create a record adequate to support factual findings on the very questions the Commission claims remain unanswered. Without such procedures, parties cannot meaningfully participate in the resolution of those disputed issues, nor can the Commission reliably distinguish between evidence, assertion, and speculation.

49. The inadequacy of the process selected by the Commission is particularly stark given the nature of the questions it seeks to answer. The Commission expressly stated that it wishes to determine what portion of the excessive costs experienced by residential and low-income shopping customers are attributable to customer choice as opposed to customer inertia. Yet the information necessary to answer those questions resides largely with EGSs, EDCs, and current or former shopping customers. Without compulsory process, directed discovery, verified responses, sworn testimony, and cross-examination, neither OCMO nor participating stakeholders will possess adequate means to obtain, verify, or test the information necessary to resolve those issues. A paper proceeding, standing alone, cannot reasonably be expected to develop the factual record that the Commission itself says is required.

[84] See 2 Pa. C.S. §§ 504, 505, 507; see also Barasch, 546 A.2d at 1305; AT&T Communications of Pa., Inc., 570 A.2d 612.

50. The due process deficiencies of the Commission's alternative process extend beyond the absence of discovery, testimony, and cross-examination. The Order directs OCMO to conduct a paper proceeding and provide "any recommendations that OCMO deems prudent" to the Commission, yet it fails to identify a governing evidentiary standard, burden of proof, procedures for resolving disputed factual issues, and no requirement that the Commission ultimately adjudicate the issues presented by Paragraph 66. As a result, parties who demonstrated substantial harm in this proceeding are left without any meaningful mechanism to obtain relief on those claims, despite having developed a substantial evidentiary record supporting such relief.

51. These concerns are compounded by the uncertainty surrounding the legal status of any potential recommendations that may be "deemed prudent" by OCMO, or the lack of any such recommendations, the determination of which has been vested within OCMO's sole discretion. The parties in this proceeding have already invested substantial resources developing an evidentiary record through testimony, discovery, briefing, exceptions, and replies to exceptions. Yet the Commission's Order provides no assurance that OCMO's recommendations will culminate in a final adjudication or other appealable agency action.[85] By declining to resolve the issues on the record before it, and instead referring those issues to an informal and uncertain process, the Commission risks depriving the parties of both the procedural protections attendant to adjudication and a meaningful avenue for appellate review.

52. Application of the due process principles and the balancing framework discussed in the legal standard section, above, confirms that the procedures contemplated by the Order are

[85] Order at 164. See AT&T Communications of Pa., Inc., 570 A.2d 612(explaining the circumstances in which a final action of the Commission is appealable); but see Culbertson v. Pa. PUC, 325 A.3d 1043 (Pa. Commw. Ct. 2024) (affirming the Commission's decision rejecting standing of a utility customer to challenge the Commission's determination in a comment proceeding).

inadequate.[86] First, the private interests at stake are substantial because the proceeding concerns the affordability of essential electric service and the protections available to prevent low income customers from facing excessive rates and higher risk of termination as a result of confusion, inertia, or inaction at the end of the contract term. Residential and low-income customers in FE PA's service territory have already sustained actual, documented harm and have a substantial interest in advancing strong consumer protections designed to prevent suppliers from unilaterally increasing rates based solely on their inaction. Second, the risk of error is substantial where disputed factual questions are evaluated without discovery, sworn testimony, cross-examination, or an evidentiary record. Third, the value of additional procedural safeguards is self-evident, as they are precisely the tools necessary to answer the factual questions identified by the Commission. The balance of interests therefore weighs heavily in favor of a formal evidentiary process rather than an informal paper proceeding.

53. Moreover, as noted, parties in this proceeding have already invested substantial time and resources developing an extensive evidentiary record regarding the harms addressed by Paragraph 66. Yet rather than adjudicating those issues on the merits, the Commission has deferred them to an informal process that may never culminate in a final adjudication regarding the relief requested in this case. In doing so, the Commission deprives parties of the procedural protections associated with adjudication while creating uncertainty regarding whether any future recommendation generated through the OCMO process will constitute a final, appealable agency action.

54. The due process concerns created by the Commission's Order are compounded by its decision to refer these issues to OCMO rather than to an Administrative Law Judge through a contested proceeding. By removing these issues from an adjudicatory forum, the Order appears to

[86] See Mathews, 424 U.S. 319; Barasch, 546 A.2d 1296.

eliminate many of the safeguards ordinarily associated with contested Commission proceedings, including restrictions on *ex parte* communications.[87] The questions the Commission asserts to be unresolved involve significant economic interests, inviting undue influence of money and politics. Indeed, there have already been number of attempts to influence this decision through letters, op eds, and mailers. Yet the Order provides no mechanism to ensure that factual information and policy arguments presented to OCMO occur on the record and in a manner that affords all interested parties notice and an opportunity to respond. The absence of such protections further undermines the reliability of any factual conclusions generated through the process and deprives parties of a meaningful opportunity to test, challenge, and rebut information presented to the Commission through its staff. A fair process to resolve the factual issues identified by the Commission requires evidentiary rigor and enforceable *ex parte* restrictions so that the Commission's decision rests on tested evidence rather than advocacy or unsupported assertion.

55. CAUSE-PA maintains that the Commission should reverse its decision and approve Paragraph 66, based on substantial record evidence overlooked by the Commission. If the Commission nevertheless concludes that additional factual development is necessary, it must modify its Order to initiate a contested, on-the-record evidentiary proceeding. At minimum, CAUSE-PA asserts that any alternative proceeding should include the following minimum elements:

a. Directed questions for all EDCs and licensed EGSs identifying critical data to inform the Commission on the remaining contested issue;[88]

[87] 66 Pa. Code § 319, 334.

[88] At a minimum, directed questions to EDCs should include (1) actual monthly data identifying the actual prices charged to residential and low income customers for competitive supply, as compared to the applicable default service rate, over the last five years; (2) the relative termination rates of shopping customers compared to default service customers; (3) the relative uncollectible expense rates of shopping customers compared to default service customers; and (4) other relevant data that may be within the EDC's system.

b. The right to discovery and the provision of sworn testimony, subject to cross-examination; and

c. Public input hearings in regions across the state to gather testimony from consumers about their experiences in the competitive market.[89]

In addition, the full record from this proceeding should be certified for inclusion in the record of this alternative statewide proceeding. Anything less would fall short of due process requirements and would undermine the Commission's express intent to "conduct[] a more comprehensive and diligent review."[90]

56. An ALJ should be assigned to the matter to oversee the proceeding, resolve evidentiary disputes, and ensure the orderly development of the record. The Commission could direct the ALJ to certify the evidentiary record for decision by the Commissioners, with the assistance of OCMO or other appropriate staff, or could conduct *en banc* evidentiary hearings. Either would permit meaningful Commission involvement while preserving an orderly, tested, and reviewable record.

57. Of critical importance, any statewide proceeding should be confined to the narrow questions the Commission identified as unresolved in this case; namely, whether residential and low income shopping customers should return to default service absent affirmative consent at the end of their contract term and whether customers on variable rate products should provide

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At a minimum, directed questions to licensed EGSs operating within any of the FE PA rate districts should include: (1) their actual contracts that have value added products, the specific nature of those products, (2) the number of customers on long term fixed rate products longer than 1 year and the actual prices paid, (3) the number of customers on time of use products and other products; and, (4) a comparison of what their customers paid for the actual contracts offered and accepted as compared to what these customers would have paid had they paid the default service price during the entire duration of their supplier contract.

Responses to these directed questions should be verified, and subject to further questions and cross examination.

[89] The Commission has articulated a desire to learn more about why consumers are being charged higher prices – inertia or conscious choice. Public input hearings should be held to gather direct testimony from consumers who have shopped, are shopping, or may shop in the future.

[90] Order at 164.

affirmative consent each quarter. That limitation would focus the inquiry on the precise issues for which the Commission found additional evidence necessary while limiting undue delay in the delivery of critical relief.

58. Accordingly, if the Commission ultimately determines that additional factual development is necessary, it must modify its Order to require a process that satisfies due process requirements in adjudicatory proceedings, including directed questions, discovery, sworn testimony, cross examination, evidentiary standards, restrictions on *ex parte* communications, and the creation of a reviewable record. Anything less would fall short of providing CAUSE-PA and the other parties to this proceeding with a meaningful opportunity to be heard and cannot be expected to resolve the factual questions identified by the Commission.

V. CONCLUSION

WHEREFORE, for the reasons enumerated above, CAUSE-PA respectfully requests that the Commission reconsider its October 26, 2026 Order rejecting paragraph 66 of the Non-Unanimous Settlement based on substantial record evidence – previously overlooked by the Commission – demonstrating clearly that low income shopping customers are not voluntarily choosing to pay higher rates for electricity to their home. In the alternative, CAUSE-PA submits that the Commission must – at minimum –modify the scope and procedure of the expedited statewide proceeding to ensure a fair, on the record evidentiary proceeding sufficient to preserve the procedural due process rights of the parties to this proceeding.

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November 10, 2026

VERIFICATION

I, Elizabeth R. Marx, as Counsel for CAUSE-PA, hereby state that the facts contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



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Date: November 10, 2026