

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

Public Meeting held December 4, 2025

Commissioners Present:

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

Application of FirstEnergy Pennsylvania Electric
Company for Approval of Certificates of Public
Convenience to Acquire Certain Electric
Distribution Facilities from Letterkenny Industrial
Development Authority and for the Right to Initiate
and Provide Electric Distribution Service in portions
of Letterkenny, Greene, and Hamilton Townships,
Franklin County, Pennsylvania

A-2023-3043428

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for
consideration and disposition is the Petition to Modify the June 13, 2024 Opinion and

Order ¹ (Petition) along with its Confidential Attachment Appendix A-1² filed by FirstEnergy Pennsylvania Electric Company (FE PA or the Company) on July 14, 2025, seeking modification of the Commission’s Order entered June 13, 2024 (*June 2024 Order*), relative to the above-captioned proceeding, approving FE PA’s Application for Approval of Certificates of Public Convenience (CPC) to Acquire Certain Electric Distribution Facilities from Letterkenny Industrial Development Authority (LIDA) and for the Right to Initiate and Provide Electric Distribution Service in portions of Letterkenny, Greene, and Hamilton Townships, Franklin County, Pennsylvania (Application) pursuant to an Asset Purchase Agreement (APA).

For the reasons set forth herein, we shall grant the Petition, consistent with the discussion in this Opinion and Order.

I. Background and Procedural History

On October 5, 2023, FE PA filed its Application, seeking CPCs authorizing FE PA to acquire certain electric distribution facilities and other property relating to LIDA and to offer, render, furnish, or supply electric distribution service to the public in additional territories, which include portions of Letterkenny, Greene, and Hamilton Townships, Franklin County, Pennsylvania, currently served by LIDA.

¹ Although FirstEnergy Pennsylvania Electric Company captioned its Petition as a “Petition for Modification,” which, pursuant to Section 5.572(c) of our regulations (Regulations), 52 Pa. Code § 5.572(c) would have been required to have been filed within 15 days of the order involved, we will nevertheless exercise our discretion to liberally construe our regulations pursuant to Section 1.2(a), 52 Pa. Code § 1.2(a), in order to secure a just, speedy, and inexpensive determination in this proceeding and shall consider FE PA’s Petition as a Petition for Amendment pursuant to 52 Pa. Code § 5.572(d) as the Petition was filed more than fifteen days after the Commission’s June 13, 2024 Order. 52 Pa.Code § 5.572(d).

² We note that while this Petition includes an asserted “Confidential Attachment,” this Order does not contain any information asserted as confidential.

On October 21, 2023, the Application was published in the *Pennsylvania Bulletin*, 53 Pa.B. 6678 (Oct. 21, 2023).

On November 6, 2023, the Office of Small Business Advocate (OSBA) filed a Protest, Notice of Intervention, and Public Statement and the Office of Consumer Advocate (OCA) filed a Notice of Intervention and Public Statement.

On November 14, 2024, the Commission issued a Telephonic Prehearing Conference Notice scheduling a prehearing conference for December 6, 2023 at 10:00 a.m. and assigning Administrative Law Judges (ALJs) Gail M. Chiodo and Alphonso Arnold III as the Presiding Officers.

On November 28, 2023, LIDA filed a Petition to Intervene Out-of-Time.

On December 6, 2023, the prehearing conference was held as scheduled. Counsel for FE PA, the OSBA, the OCA, and LIDA participated.

On December 12, 2023, the ALJs issued a Scheduling Order, granting LIDA's Petition to Intervene and memorializing the agreements made concerning the procedural matters discussed during the prehearing conference, including, *inter alia*, the need for a Protective Order.³

³ We note that the Scheduling Order discussed the need for a Protective Order and while the agreement for a Protective Order was not expressly memorialized in any Order, we acknowledge that the APA was afforded confidential treatment in the *June 2024 Order*. Therefore, as a matter within our discretion under Section 1.2 of the Commission's Regulations, 52 Pa. Code § 1.2, and the fact that the request for the issuance of a Protective Order was uncontested, in addition to addressing FE PA's Petition to Modify, we will grant the request for the issuance of a Protective Order, pursuant to 52 Pa. Code § 5.365.

On December 20, 2023, the Commission issued a Telephonic Hearing Notice, scheduling an evidentiary hearing in this matter for March 5, 2024 at 10:00 a.m.

On January 4, 2024, pursuant to the litigation schedule, FE PA and LIDA submitted Direct Testimony and Exhibits. No other party submitted Direct Testimony or Exhibits. No party submitted Rebuttal or Surrebuttal Testimony.

On February 16, 2024, the OSBA filed a Notice of Withdrawal, pursuant to 52 Pa. Code § 5.94(b).⁴

On March 1, 2024, FE PA, via electronic mail, requested the ALJs cancel the evidentiary hearings, as its Application was no longer contested. In addition to its request, FE PA also filed a Joint Stipulation of Facts signed by FE PA, LIDA, and the OSBA.

On March 4, 2024, the Commission issued a Hearing Cancellation Notice, cancelling the March 5, 2024, evidentiary hearing.

On March 7, 2024, the ALJs issued an Order Referring Application to the Commission's Bureau of Technical Utility Services (TUS).

On June 13, 2024, the Commission entered an Order in this proceeding, which approved the Application.

⁴ This Section provides: "(b) A protest to an application may be withdrawn by filing a notice of withdrawal directed to the Commission or the presiding officer. The notice must state that the protest is withdrawn and provide the reasons for the withdrawal." 52 Pa. Code § 5.94(b).

As noted above, on July 14, 2025, FE PA filed its Petition.⁵ To date, no Answers to FE PA's Petition have been filed.

On November 14, 2025, and November 19, 2025, FE PA filed Responses to the Pennsylvania Public Utility Commission's Requests for Supplemental Information.

II. Discussion

A. Legal Standards

In considering the Petition, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Public Utility Code (Code) establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa.C.S. § 703(f), (g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572 (relating to petitions for relief following the issuance of a final decision).

⁵ We note that FE PA filed its Petition on July 14, 2025, more than six months past the December 31, 2024 closing date approved in our *June 2024 Order*. Further, in that order, we instructed FE PA that, “[i]f [FE PA] determines that the proposed transaction will not take place, it shall promptly notify this Commission.” *See* O.P. No. 5, *June 2024 Order*.

In exercising Commission authority to amend or rescind an order pursuant to Section 703(g) of the Code, the Supreme Court of Pennsylvania has stated: “Because such relief may result in disturbance of final orders, it must be granted judiciously and only under appropriate circumstances.” *See, City of Pittsburgh v. Pa. Dep’t of Transp.*, 416 A.2d 461 (1980).

The standards for granting a Petition for Amendment were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982) (*Duick*):

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), 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. In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that: Parties cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them 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 by the Commission.

Duick, 56 Pa. P.U.C. at 559 (quoting *Pennsylvania Railroad Co. v. Pennsylvania Pub. Serv. Comm’n*, 179 A. 850, 854 (Pa. Super. 1935)).

Under the standards of *Duick*, a petition for rescission or amendment may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick*, 56 Pa. P.U.C. at 559.

We have noted that the Commission has administrative discretion regarding whether to grant or deny a petition for rescission or amendment of an order filed under 66 Pa.C.S. § 703(g). *West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995). However, such a petition should only be granted judiciously and under appropriate circumstances because such an action results in the disturbance of a final order. *Id.* Furthermore, as such, the Commission has wide latitude to deny a petition for rescission or amendment.

B. June 2024 Order

In the *June 2024 Order*, the Commission approved FE PA's Application to acquire certain electric distribution facilities and other property relating to LIDA, and to offer, render, furnish or supply electric distribution service to the public in additional service territories, which include portions of Letterkenny, Greene, and Hamilton Townships, Franklin County, Pennsylvania. *See June 2024 Order* at 5.

C. FirstEnergy Pennsylvania Electric Company's Petition

Through its Petition, FE PA requests that the Commission modify the *June 2024 Order* to reflect updated terms in the APA due to a change in the originally contemplated closing date. Petition at 1. FE PA explains that the APA contemplated a closing date by December 31, 2024, but that closing did not take place by that date and is now anticipated to occur by December 15, 2025. *Id.* at 5. FE PA states that closing did not take place as originally planned because the U.S. Army failed to timely sign both the termination of electric services agreement with LIDA and the U.S. General Services Administration Areawide Public Utility Contract. *See Responses of FE PA to the Commission's Request for Supplemental Information dated November 14, 2025.* As a result of the postponed closing, FE PA and LIDA executed an amendment to the APA which seeks to modify the terms and conditions in the Agreement. Specifically, FE PA

seeks to change: (1) the closing date, from December 31, 2024 to December 15, 2025; (2) the purchase price to include additional amounts based upon those improvements made to the system by LIDA that were placed in service on or after January 1, 2025; and, (3) an inclusion of an acknowledgement of the Parties that the Amendment must be approved by the Commission prior to closing and requesting Commission action prior to November 30, 2025. FE PA further provides in its Petition that proposed changes were intended to supersede any prior language to the contrary. Petition at 4-6.

According to FE PA, in order to address customer requirements, upgrades to the electric distribution system (EDS) were necessary during 2025, which added value to the EDS. Petition at 5. FE PA explains that the completed upgrades consist of the installation of new service facilities for three buildings and a transformer replacement, and additionally that construction work in progress consists of the installation of car chargers, pole replacements, and two additional projects described in confidential Attachment B to FE PA's supplemental information. *See Responses of FE PA to the Commission's Second Request for Supplemental Information dated November 18, 2025.* FE PA states that the amendment enables LIDA to be reimbursed at book value for the additional EDS assets being transferred to FE PA. Petition at 5. FE PA also provides that construction work in progress will be reimbursed as provided in Section 1.02 of the confidential Amendment No. 2 to the APA. Appendix A-1 at 1. FE PA asserts that the amendment does not disturb the value of the pre-2025 assets but enables LIDA to be reimbursed solely for its additional investment in the EDS being conveyed to FE PA. Petition at 5-6.

D. Disposition

As mentioned, a petition for amendment or rescission is governed by *Duick*, which essentially requires a two-step analysis. First, we determine whether a party has offered new or novel arguments or identified considerations that appear to have

been overlooked or not addressed by the Commission in its previous order. We will not reconsider our previous decision based on arguments that have already been considered. However, we will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. The second step of the *Duick* analysis is, therefore, to evaluate the new or novel argument or overlooked consideration, to determine whether to modify our previous decision.

Based on our review of FE PA's Petition and the record documents, we will grant the Petition consistent with the following discussion.⁶

In this case, FE PA's amendment does not require the Commission to reconsider the same questions that were previously decided in this proceeding, including the valuation of the assets rendered prior to January 1, 2025. Rather, FE PA requests that the Commission permit the Company to amend the APA. FE PA explains that improvements have been made to the LIDA EDS that were not contemplated in the original APA because these improvements became necessary and were made *after* the targeted closing date of December 31, 2024. Petition at 5-6. The expenses for these upgrades, which occurred past the expected December 31, 2024, closing date contained in the *June 2024 Order*, were not addressed by the Commission in the *June 2024 Order*. Due to the necessary change in the projected closing date, and the corresponding need for

⁶ We note that in its Petition, FE PA neither addresses 52 Pa. Code § 5.572 relating to petitions for relief following the issuance of a final decision, nor the *Duick* Standard. Nevertheless, while they are not explicitly asserted in the context of a *Duick* analysis, we find that the FE PA's new argument regarding the need to reflect updated costs incurred for upgrades that became necessary *after* the anticipated transaction closing date, we find that the *Duick* standard has been met, as detailed further, *infra*. Therefore, while we caution FE PA that further filings should comply with the Commission's Regulations and address applicable legal standards, pursuant to 52 Pa. Code § 1.2(a), we will approve the Petition in the interest of promptly resolving the uncontested Petition.

reimbursement for the required system improvements, we conclude that FE PA's Petition satisfies the first step in our analysis under *Duick*, by presenting matters we deem worthy of reconsideration.

Thus, the question for resolution is whether the rationale for the modification is sufficient to persuade the Commission to exercise its discretion to amend its prior order. Here, since the original contemplated closing date of December 31, 2024, has lapsed, it is appropriate to change the APA to include the new anticipated closing date of December 15, 2025. Furthermore, we find that LIDA should be compensated for the reasonable expenses incurred to make necessary upgrades to the EDS assets that will be transferred to FE PA. Moreover, we note that the amendment was entered into by both FE PA and LIDA and no party has filed an objection to FE PA's Petition.

Additionally, the Commission's Regulation at 52 Pa. Code § 1.15(a)(1) gives us authority and discretion to extend the period of time where an act is required or allowed to be done at or within a specified time, where reasonable grounds are shown for failure to act. Under the circumstances of the instant case, we deem it is appropriate to extend the closing date of FE PA's acquisition of LIDA to account for the unanticipated improvements that needed to be addressed past the original closing date. Based on our review of the Petition and the record documents, we will grant FE PA's Petition. We find that the assertions raised in the Petition regarding the facts of this case warrant amending our prior Order consistent with this Opinion and Order.

It is important to note that our approval of FE PA's APA Amendment, which includes FE PA's reimbursement to LIDA for costs associated with improvements made on or after January 1, 2025, shall not be construed as Commission pre-approval of the reasonableness of recovery of these costs in a future rate proceeding. In reviewing the agreement filed by FE PA and LIDA, Section 507 of the Code, 66 Pa.C.S. § 507, provides the applicable standards. Pursuant to Section 507, contracts or agreements

between a public utility and a municipal corporation, except contracts to furnish service at regular tariff rates, must be filed with the Commission at least thirty days prior to the effective date of the contract or agreement. In determining whether to approve such agreements, the Commission will consider the reasonableness, legality, or any other matter affecting the validity of the agreement. By approving a Section 507 Agreement regarding an acquisition, the Commission does not address any rate-related issues. Those determinations are to be made in the context of a base rate proceeding, where the Company has the burden of proving that any expenditure and the proposed rates are just and reasonable.

III. Conclusion

For the reasons discussed herein, we will grant FirstEnergy Pennsylvania Electric Company's Petition and approve the Asset Purchase Agreement Amendment;
THEREFORE,

IT IS ORDERED:

1. That the Petition of FirstEnergy Pennsylvania Electric Company to Modify the June 13, 2024 Opinion and Order, filed on July 14, 2025, is granted, consistent with this Opinion and Order.
2. That FirstEnergy Pennsylvania Electric Company's uncontested request for a Protective Order is granted, consistent with the discussion in this Opinion and Order.
3. That the proposed amendments contained in Confidential Attachment Appendix A-1 are approved, consistent with this Opinion and Order.

4. That a copy of this Opinion and Order be served on all of the parties of record.

BY THE COMMISSION,

A handwritten signature in black ink that reads "Matthew L. Homsher". The signature is written in a cursive style with a large initial "M".

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: December 4, 2025

ORDER ENTERED: December 4, 2025