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May 27, 2026

Matthew L. Homsher, Esq., Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

Re: Interconnection and Tariffs for Large Load Customers; Docket No. M-2025-3054271

Dear Secretary Homsher:

Enclosed for filing is the Petition for Reconsideration or Clarification pursuant to 52 Pa. Code § 5.572 of the Commission's Final Order entered on May 12, 2026, at Docket No. M-2025-3054271

Sincerely,

Danielle Jouenne

Danielle Jouenne
Vice President and General Counsel

Enclosure

cc via email: COS

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Interconnection and Tariffs for Large :
Load Customers : Docket No. M-2025-3054271

**PETITION OF THE ENERGY ASSOCIATION OF PENNSYLVANIA FOR
RECONSIDERATION OR CLARIFICATION**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

The Energy Association of Pennsylvania (“EAP”)¹ hereby petitions the Pennsylvania Public Utility Commission (“Commission”) pursuant to 52 Pa. Code § 5.572 for reconsideration or clarification of the Commission’s Final Order entered on May 12, 2026, at Docket No. M-2025-3054271 (“Order”).² In the Order, the Commission issued its model tariff for Large Load Customers (“Model Tariff”) to provide “guidance” in the “areas of interconnection costs, interconnection studies, minimum contract terms, exit fees, and collateral, among other areas.” Order, pp. 1-2.

EAP respectfully requests reconsideration or clarification of the Commission’s Order. The Commission’s Order and Model Tariff overstep in three critical respects that warrant

¹ EAP’s members include: Citizens’ Electric Company; Columbia Gas of Pennsylvania, Inc.; Duquesne Light Company; FirstEnergy Pennsylvania Electric Company; Leatherstocking Gas Company, LLC; National Fuel Gas Distribution Corp.; PECO Energy Company; Peoples Natural Gas Company LLC; Philadelphia Gas Works; Pike County Light & Power Company; PPL Electric Utilities Corporation; UGI Utilities, Inc.; Valley Energy, Inc.; and Wellsboro Electric Company. EAP notes that PPL Electric Utilities Corporation does **not** join in this Petition.

² EAP and its members herewith reserve their rights to prosecute all of their federal claims in a Federal District Court of Pennsylvania, including but not limited to all claims pursuant to the Federal Power Act, Section 1983 of the Civil Rights Act, the Commerce Clause of the United States Constitution, the Supremacy Clause of the United States Constitution, the Fourteenth Amendment of the United States Constitution, and all similar claims including all claims for damages thereunder, according to the rule of *England v. La. State Bd. of Med. Exam'rs*, 375 U.S. 411 (1964).

reconsideration or clarification: (1) establishing a “but-for” test and contribution in aid of construction (“CIAC”) requirement for transmission network upgrades that are squarely within the Federal Energy Regulatory Commission’s (“FERC”) jurisdiction; (2) permitting Large Load Customers to self-construct infrastructure upgrades, “even if those upgrades would be network upgrades impacting the broader grid rather than infrastructure on the customer side of the meter,” when FERC and the North American Electric Reliability Corporation (“NERC”) have jurisdiction over such upgrades; and (3) mandating that electric distribution companies (“EDCs”) complete interconnection studies for transmission facilities subject to FERC’s exclusive jurisdiction within 6 months and refund 50% of the application fee for each 90-day period beyond the 6-month deadline, despite the studies requiring coordination with the FERC-approved interconnection procedures of PJM Interconnection, LLC (“PJM”) and involving other issues that are outside the EDCs’ control. Order, pp. 41-43, 62-64, 97-98.

Additionally, FERC recently issued an Order on April 16, 2026, announcing its intent to act, with respect to its docket on the interconnection of large loads to the interstate transmission system, by the end of June 2026. *See Interconnection of Large Loads to the Interstate Transmission Sys.*, Docket No. RM26-4-000, 195 FERC ¶ 61,045 (Apr. 16, 2026) (“Intent to Act Order”). The challenges and opportunities posed by the interconnection of large loads require careful consideration. Before the Commission embarks down the path of its Model Tariff and establishes rules that go beyond its jurisdiction, the Commission should ensure that both state and federal regulatory requirements align to provide safe, orderly, efficient, and lawful interconnections of large loads with the interstate transmission system. By granting this Petition and the relief requested herein, the Commission would accomplish that objective.

Based on the foregoing, and as explained in more detail below, EAP respectfully requests that the Commission grant this Petition and modify its Order consistent with this Petition.

II. INTRODUCTION

1. On November 6, 2025, the Commission issued its Tentative Order setting forth a proposed model tariff for Large Load Customers and inviting interested parties to submit Comments.

2. Comments were filed by many interested parties, as noted on pages 3-5 of the Order.

3. On May 12, 2026, the Commission entered its Order issuing its Model Tariff.

III. THE STANDARD FOR GRANT OF RECONSIDERATION OR CLARIFICATION HAS BEEN MET

4. The Commission's standards for granting reconsideration following final orders are set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982):

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 said that “[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and 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 or not addressed by the Commission.

5. The Commission has cautioned that the operative language of the *Duick* standard focuses on the deliberations of the Commission, not the arguments of the parties. *See Pa. PUC v PPL Electric Utilities Corp.*, Docket No. R-2012-2290597 (Order entered May 22, 2014).

6. Here, at the time Comments were submitted, FERC had yet to issue its Intent to Act Order. Given that the advance notice of proposed rulemaking in the FERC docket addressed, from

the standpoint of FERC's exclusive authority over transmission, transmission costs related to data centers and how such costs would be allocated,³ FERC's forthcoming June 2026 action is likely to address that issue.

7. In that respect, FERC and the Commission would be addressing the same issue, potentially in conflicting ways. The same is true of the issue of the timing of transmission studies and the consequences for missing deadlines in the study process.

8. The Commission does not reference FERC's Intent to Act Order at any point in its Order.

9. Although FERC states in its Intent to Act Order that its "efforts toward reform, including those [it] will announce in June, should not be interpreted as 'discourag[ing] public utilities from making filings to address these and similar issues under [Federal Power Act (FPD)] section 205," the Commission evidently did not consider the impact of FERC's forthcoming action by the end of June 2026 as part of its Order entered on May 12, 2026. Intent to Act Order, 195 FERC ¶ 61,045, P5.

10. Therefore, given the conflicts with existing federal requirements, along with the potential for more depending on FERC's actions by the end of June 2026, the Commission should grant this Petition and reevaluate its Order and Model Tariff with the benefit of FERC's forthcoming action on large load interconnections.

11. Doing so would enable the Commission to fashion rules that, unlike those discussed in this Petition, do not intrude upon the exclusive jurisdiction of FERC and NERC that is anticipated to be addressed at the federal level by the end of June.

³ *Interconnection of Large Loads to the Interstate Transmission System*, Advance Notice of Proposed Rulemaking (Oct. 23, 2025).

12. Furthermore, in its Order, the Commission, for the first time, adopts a “but-for” test for determining when a Large Load Customer must pay a CIAC for network transmission upgrades. *See* Order, pp. 29-43.

13. Previously, in its Tentative Order, the Commission “found that a Large Load Customer should make a CIAC contribution to offset the cost of the line if they receive more than half of the benefit of this line.” *Id.*, p. 29.

14. However, in its Order, the Commission has adopted a “but-for” test, which specifies that “[i]f a Network Improvement would not have been needed ‘but for’ the interconnection of the Large load Customer, then the costs of the upgrade would be allocated to that customer irrespective of whether other customers would benefit from it.” *Id.*, p. 42.

15. Because there was no opportunity to submit Reply Comments under the Tentative Order,⁴ EAP and its members were unable to respond to the Commission’s “but-for” test and CIAC requirement, which raise serious concerns over the bounds of the Commission’s jurisdiction.

16. With respect to the Commission’s self-construct option under the Model Tariff, the Commission has incorporated a requirement that FERC and NERC rules be followed but failed to clarify how the Commission could enforce such a requirement when FERC and NERC have jurisdiction over those facilities.

17. As the Commission fully recognizes that the self-construct option is an “out-of-the-box proposal,” the Commission should duly consider how this requirement will be enforced, if it ultimately rejects EAP’s argument that the self-construct option should be removed. Order, p. 97.

⁴ *See* Order, p. 46 (stating that “comments filed in response to this Tentative Order are due no later than thirty days from the date the Notice of this Tentative Order is published in the *Pennsylvania Bulletin*” and that “[n]o reply comments shall be permitted”).

18. Based on the foregoing, these new and novel issues have not been addressed in this proceeding and, more importantly, raise important legal issues that were overlooked or not considered by the Commission in its Order.

19. Thus, these issues satisfy the Commission's standards for reconsideration under *Duick, supra*, and the Commission should grant reconsideration or clarification of its Order, as set forth in the following section.

IV. ARGUMENT FOR RECONSIDERATION OR CLARIFICATION

20. The Commission should reconsider or clarify its Order due to three aspects of its Order and Model Tariff that violate the jurisdiction of FERC, NERC, or both.

A. THE COMMISSION'S "BUT-FOR" TEST AND CIAC REQUIREMENT APPLIED TO NETWORK TRANSMISSION UPGRADES EXCEED THE COMMISSION'S JURISDICTION

21. The Commission should reconsider or clarify its adoption of a "but-for" test and CIAC requirement for transmission network upgrades.

22. Despite recognizing that "questions of state versus federal jurisdiction arise" when "upgrades occur on the transmission rather than the distribution system," the Commission instituted a CIAC requirement for Large Load Customer network transmission upgrades that directly conflicts with FERC's exclusive jurisdiction. Order, pp. 41-43.

23. Under that CIAC requirement, the Commission would apply a "but-for" test, under which "[i]f a Network Improvement would not have been needed 'but for' the interconnection of the Large load Customer, then the costs of the upgrade would be allocated to that customer irrespective of whether other customers would benefit from it." *Id.*, p. 42.

24. As support for its determination, the Commission pointed to comments that asked for the Commission to "take a broader view of cost causation principles when allocating costs" and noted the Natural Resources Defense Council's ("NRDC") claim that the Commission has

jurisdiction over interconnection for retail customers within the Commonwealth, regardless of whether the interconnection is to the distribution or transmission system. *Id.*, p. 41. The Commission also asserted that “this but-for test would also align with the statement of principles agreed to by the governors of the thirteen states that comprise PJM Interconnection.” *Id.*, pp. 41-42. Additionally, the Commission explained that its decision was based on policy reasons, stating, “Given the unprecedented nature of this load growth, we find that the Commission’s approach to cost allocation must adapt to shield ratepayers from socialization of costs that are properly attributed to Large Load Customers while protecting the Large Load Customer from paying for previously Commission-approved [Long-Term Infrastructure Improvement Plan (‘LTIP’)] planned improvements.” *Id.*, pp. 42-43.

25. The Commission should reconsider or clarify its Order to eliminate the “but-for” test and CIAC requirement because it intrudes upon FERC’s exclusive jurisdiction.

26. The Federal Power Act (“FPA”) grants FERC exclusive jurisdiction over the transmission of electric energy in interstate commerce, and all facilities used for such transmission of electric energy. *See* 16 USC § 824(b); *see also Appalachian Power Co. v. Pub. Serv. Comm’n of W. Va.*, 812 F.2d 898 (4th Cir. 1987) (“APC”).

27. By contrast, states have jurisdiction over facilities “used in local distribution.” *See* 16 USC § 824(b).

28. The seven-factor test under FERC Order 888 is a well-established process for delineating the line between FERC-jurisdictional “facilities used for transmission in interstate commerce” and “state-jurisdictional local distribution facilities.” *New York v. FERC*, 535 U.S. 1, 12 (2002) (citations omitted).

29. The Commission’s “but-for” standard conflicts with that federal test, by requiring a CIAC payment for distribution and transmission facilities, regardless of whether the facilities are Commission-jurisdictional.

30. Although the Commission has jurisdiction over retail electric service, the Commission cannot invoke that authority to impose a state-imposed CIAC requirement for transmission network upgrade costs.

31. The reason why is that FERC has exclusive jurisdiction over the rates and cost allocation structure for transmission network upgrades.

32. FERC’s exclusive jurisdiction under the FPA also contains no exception for transmission facilities used to facilitate (or necessitated by) load interconnections, retail or otherwise; rather, the controlling standard is whether the facilities at issue are facilities used to transmit electric energy in interstate commerce or are local distribution facilities.

33. If the facilities are the former, the rules governing the cost allocation of such facilities are within FERC’s exclusive jurisdiction, regardless of the Commission’s policy aims. *See* U.S. Const. art vi (Supremacy Clause); *see also Hughes v. Talen Energy Marketing, LLC*, 578 U.S. 150, 162-66 (2016) (holding that states may not seek to achieve ends, however legitimate, through regulatory means that intrude on FERC’s exclusive jurisdiction).

34. Commenters pointed out the limits of the Commission’s jurisdiction in this area.

35. For example, EAP stated that “Pennsylvania EDCs and their affiliated transmission companies cannot implement cost allocation methodologies that conflict with FERC-approved tariffs and orders.” EAP Comments, p. 9.

36. Likewise, FirstEnergy Pennsylvania Electric Company (“FE PA”) explained in its Comments that “the Commission lacks jurisdiction to prescribe a cost allocation or rate concerning transmission facilities.” FE PA Comments, p. 8.

37. In support, FE PA cited the Fourth Circuit’s decision in *APC*, which held that FERC had exclusive jurisdiction over a Transmission Equalization Agreement (“TEA”) that governed cost allocation among affiliated utility companies based on “a formula that accounts for the demand each company places on the system.” FE PA Comments, p. 8 (quoting *APC*, 812 F.2d at 900).

38. The Fourth Circuit reasoned that the FPA “specifically delegates to FERC regulatory authority over the facilities used for the transmission and sale of interstate energy . . . and over ‘rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission.’”

39. FE PA further stated that its position was supported by the Third Circuit’s recent ruling in *Transource Pa., LLC v. DeFrank*, 156 F.4th 351, 376 (3d Cir. 2025), where the Court held that this same Commission overstepped its jurisdiction by second-guessing matters that within FERC’s exclusive jurisdiction. *See* FE PA Comments, p. 9.

40. PPL Electric Utilities Corporation (“PPL Electric”) raised the same concern, noting that “[r]ecovery of investment in transmission network upgrades is a ratemaking question” and that “[f]or transmission facilities, ratemaking is regulated by FERC (not the Commission).” PPL Comments, p. 8.

41. For these reasons, and especially in light of FERC’s forthcoming action on the rules governing the interconnection of large loads with the interstate transmission system, the Commission should modify its Order to eliminate the “but-for” test and CIAC requirement.

42. At the very least, the Commission should clarify that this “but-for” test and CIAC requirement only apply to Commission-jurisdictional distribution facilities, as determined by FERC’s Order 888 seven-factor test.⁵

B. BY PERMITTING LARGE LOAD CUSTOMERS TO SELF-CONSTRUCT TRANSMISSION SYSTEM INFRASTRUCTURE, THE COMMISSION HAS ACTED BEYOND ITS JURISDICTION

43. The Commission also should reconsider or clarify its Order to remove the self-construct option from the Model Tariff.

44. Under the self-construct option, Large Load Customers can “self-construct infrastructure upgrades, even if those upgrades would be network upgrades impacting the broader grid rather than infrastructure on the customer side of the meter.” Order, p. 97.

45. In its Order, the Commission states that “[a]ny self-construction would be required to meet all EDC standards for safety and reliability” and that “[t]hose upgrades would also have to comply with all applicable FERC and NERC regulations.” *Id.*, p. 98.

46. The Commission has decided to advance the self-construct option because commenters: (a) raised concerns about workforce, supply chain, and speed-to-market; and (b) asserted that “customer construction can reduce costs for the overall system and protect ratepayers, as any assets constructed by the customer would not be included in utility rate bases.” *Id.*, p. 98.

⁵ To the extent the Commission does not treat the issues as part and parcel, the Order’s requirement that EDCs impose financial security requirements not only for Interconnection Facilities, but also for Network Improvements, fails on the same grounds and should be similarly rejected. A requirement to post security for a FERC-jurisdictional transmission asset is logically tied to the rates, terms and conditions of service over that asset which are under FERC’s exclusive jurisdiction. Therefore, the Order’s security provisions, insofar as they cover improvements to interstate transmission assets, are preempted by federal law. *See* U.S. Const. art vi (Supremacy Clause); *see also Hughes v. Talen Energy Marketing, LLC*, 578 U.S. 150 (2016) (holding that states may not seek to achieve ends, however legitimate, through regulatory means that intrude on FERC’s exclusive jurisdiction).

47. In the Commission’s view, “a policy that makes Pennsylvania a more attractive place for investment and economic development while simultaneously insulating ratepayers from stranded costs is in the public interest.” *Id.*

48. The Commission concedes that this option is an “out-of-the-box proposal,”⁶ and while ingenuity should be encouraged, novel ideas must be constrained by prevailing law.

49. Here, the Commission’s decision to permit self-construction of network transmission upgrades intrudes upon the jurisdiction of FERC and NERC.

50. As explained previously, FERC has the sole authority to establish rates, terms and conditions relating to service provided over facilities subject to its jurisdiction. *See* 16 USC § 824(b); *see also New York v. FERC*, 535 U.S. 1 (2002); *APC*, 812 F.2d 898.

51. NERC, as the Electric Reliability Organization (“ERO”) certified by FERC, is charged to establish and enforce reliability standards for the bulk-power system.⁷ *See id.* § 824o.

52. In this case, the Commission acknowledges that its proposal directly implicates FERC-jurisdictional transmission rates, including the costs that would be “included in utility rate bases” used to calculate transmission rates. Order, pp. 97-98.

53. Moreover, as the Commission requires the self-constructed upgrades to “comply with all applicable FERC and NERC regulations,” the Commission clearly views those entities as responsible for regulating such upgrades. *Id.*, p. 98. In light of this position, it would be reasonable for the Commission to have the expected FERC guidance anticipated under the Intent to Act Order before making a final determination.

⁶ Order, p. 97.

⁷ The “bulk-power system” is defined as: (a) “facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof);” and (b) “electric energy from generation facilities needed to maintain transmission system reliability.” 16 U.S.C. § 824o(a)(1)(A)-(B).

54. The Commission’s policy goals, including its determination that its self-construct option is “in the public interest,” cannot be used to supersede FERC’s and NERC’s jurisdiction. *See, e.g., Hughes v. Talen Energy Marketing, LLC*, 578 U.S. 150, 162-66 (2016).

55. Further, the Commission’s clarification that the self-constructed upgrades must “comply with all applicable FERC and NERC regulations” does not resolve the questions about enforcement of those regulations. Order, p. 98.

56. A non-utility, non-NERC-registered entity constructing facilities that touch or affect the transmission system is operating in a space where the enforcement structure does not exist.

57. Yet, the Commission asserts that these upgrades, including network transmission upgrades, must comply with the applicable FERC and NERC regulations.

58. As such, the Commission, through its Order, is attempting to assert jurisdiction over those facilities and impose requirements on them.

59. Not only does that exercise of authority go beyond the Commission’s jurisdiction, but it creates serious uncertainty over which entity can and will ensure that the self-constructed upgrades comply with those regulations.

60. The Commission should, therefore, remove this self-construct option and properly leave the regulation of such facilities to FERC and NERC. *See Duquesne Light Comments*, p. 18 (“[C]onstruction of facilities that potentially impact the transmission system should be restricted to organizations under FERC and NERC oversight, which excludes data center customers and developers.”).

C. THE COMMISSION'S DEADLINE TO COMPLETE INTERCONNECTION STUDIES VIOLATES FERC'S EXCLUSIVE JURISDICTION AND DOES NOT PROPERLY ACCOUNT ISSUES THAT ARE OUTSIDE OF EDCS' CONTROL

61. The Commission should reconsider or clarify its deadline for an EDC to complete an interconnection study within 6 months, along with its requirement that an EDC refund 50% of the application fee for every 90 days beyond that deadline.

62. In its Order, the Commission finds that the 6-month timeframe “provid[es] an appropriate amount of accountability for EDCs while removing speculative loads from the interconnection queue.” Order, p. 62.

63. The Commission also maintains its proposed “50% application fee refund” and states that it “expect[s] that EDCs may be solely responsible for the costs associated with the refunds, which should not be allocated to other customers.” *Id.*, pp. 62-63.

64. As noted previously, FERC has sole authority to establish rates, terms and conditions relating to service provided over facilities subject to its jurisdiction. *See* 16 USC § 824(b); *see also New York v. FERC*, 535 U.S. 1 (2002); *APC*, 812 F.2d 898.

65. The Commission defines “Network Improvements” in its Model Tariff as “all incremental facilities needed to provide service to the Large Load Customer” Order, Appx., Model Tariff.

66. Accordingly, the Commission’s study and refund/penalty provisions would cover not only local distribution facilities subject to Pennsylvania’s jurisdiction, but also any necessary transmission facilities subject to FERC’s exclusive jurisdiction under the FPA.

67. Because procedures and penalties relating to FERC-jurisdictional transmission facilities constitute terms and conditions of service over those facilities, the Commission’s requirements are preempted by federal law.

68. FERC also has promulgated a number of orders in which it has asserted jurisdiction over transmission planning. *See, e.g., Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007).

69. By attempting to impose procedures and penalties relating to studies that include FERC-jurisdictional transmission facilities, the Order intrudes on FERC's transmission planning authority.

70. Additionally, the Commission's 6-month deadline and related refund provision will create problems for loads that are connected at transmission-level voltages, as these interconnections require coordination with PJM's FERC-approved interconnection procedures.

71. Because EDCs lack direct control over PJM's interconnection process, EDCs cannot ensure that an interconnection study is completed within 6 months.

72. In fact, when a study requires PJM queue coordination, transmission owner involvement, or right-of-way resolution it may take longer than the proposed deadline.

73. Nonetheless, under the Commission's Order and Model Tariff, an EDC would be subject to refunds of application fees and potential penalties for failing to meet the Commission's prescribed deadline.

74. Finally, FERC will be taking action by the end of June 2026 on its rules governing the interconnection of large loads with the interstate transmission system, as observed previously. *See Intent to Act Order.*

75. Before setting strict deadlines and refund/penalty provisions for the completion of interconnection studies for these loads, the Commission should ensure that its provisions comport with federal requirements.

76. Thus, the Commission should eliminate its 6-month deadline and related refund/penalty provisions or, at the very least, exempt an EDC from the deadline and related application fee refund when factors outside the EDC's control cause the EDC to miss the deadline.

V. **CONCLUSION**

WHEREFORE, the Pennsylvania Public Utility Commission should grant the Energy Association of Pennsylvania's Petition for Reconsideration or Clarification and enter an Order consistent therewith.

Respectfully submitted,

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Dated: May 27, 2026

*Counsel for Energy Association of
Pennsylvania*

VERIFICATION

I, Andrew S. Tubbs, President and Chief Executive Officer of the Energy Association of Pennsylvania, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief 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).

Date: May 27, 2026

Signed by:

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Andrew S. Tubbs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this filing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Dated: May 27, 2026

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