

May 29, 2026

Via Electronic Filing

Matthew L. Homsher, Secretary
Pennsylvania Public Utility
Commission Commonwealth
Keystone Building
400 North Street
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

Dear Secretary Homsher:

Enclosed please find Constellation Energy Generation, LLC and Constellation NewEnergy, Inc.'s (together, "Constellation") Answer in Opposition to Office of Consumer Advocate's Motion to Dismiss Objections and to Compel with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Regards,

Marsha D. Makel

Marsha D. Makel,
Assistant General Counsel

cc: Deputy Chief Administrative Law Judge Mark A. Hoyer (mhoyer@pa.gov)
Administrative Law Judge Erin L. Gannon (egannon@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

Dated this 29th day of May, 2026.

VIA ELECTRONIC MAIL

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May 29, 2026

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CONSTELLATION ENERGY GENERATION, LLC AND CONSTELLATION
NEWENERGY, INC.’S ANSWER IN OPPOSITION TO OFFICE OF CONSUMER
ADVOCATE’S MOTION TO DISMISS OBJECTIONS AND TO COMPEL**

Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. (together, “Constellation”), by and through undersigned counsel, respectfully submit this Answer in Opposition to the Office of Consumer Advocate’s (“OCA”) Motion to Dismiss Objections and to Compel Constellation to Answer Interrogatories (the “Motion”). For the reasons set forth the below, the OCA’s Motion should be denied in its entirety.

I. INTRODUCTION

The OCA seeks to compel Constellation, a non-testifying intervenor that did not sponsor any direct testimony in this proceeding, to produce competitively sensitive commercial information about its retail renewable energy products, including contract terms and granular historical customer counts spanning more than two years. The OCA’s request is not reasonably calculated to discover relevant, admissible evidence regarding FirstEnergy’s proposed Default Service Program (“DSP”) for the period June 1, 2027 to May 31, 2031. Rather, the OCA seeks a fishing expedition into Constellation’s proprietary business operations that would cause substantial

competitive harm while providing no material benefit to the Public Utility Commission's ("Commission") review of FirstEnergy's DSP VII.

While Constellation acknowledges it did not strictly comply with every procedural deadline established in the March 19, 2026 Prehearing Conference Order, these procedural missteps do not constitute waiver, nor do they warrant compelling production of irrelevant, unduly burdensome, and confidential historical information. Constellation has valid, substantial objections on the merits that independently justify denial of the Motion. Moreover, the parties engaged in good-faith efforts to resolve the discovery dispute, Constellation offered partial production both before and after the Motion was filed, and the OCA has suffered no meaningful prejudice from the brief delay.

The Commission should deny the Motion because: (1) the discovery sought is not relevant to any issue properly before the Commission in this DSP proceeding; (2) the request is overbroad, unduly burdensome, and seeks confidential commercial information that would cause Constellation competitive harm; (3) Constellation's status as a non-testifying intervenor who filed no direct testimony weighs heavily against compelling broad discovery into its business operations; (4) any procedural defects did not prejudice the OCA and should be excused based on substantial compliance and good cause; and (5) to the extent any production is ordered, it should be strictly limited in temporal scope, aggregated to protect confidentiality, and subject to the existing Protective Order.

II. BACKGROUND

On February 3, 2026, the FirstEnergy Pennsylvania Electric Company ("FirstEnergy") filed with the Commission a Petition for approval of its Default Service Plan for its generation customers (the "Petition"). The Company's existing DSP is set to expire on May 31, 2026. The proposed DSP is for the period of June 1, 2027, through May 31, 2031. This filing has been made

pursuant to the requirements of Act 129 of 2008 (Act 129), the Commission’s Regulations § 54.185(a), the Commission’s Policy Statement on Default Service, and related Commission Orders. FirstEnergy requested approval of its DSP by November 1, 2026 to have sufficient time to complete the competitive procurement process to obtain default generation supplies. In its Petition, FirstEnergy set forth its proposed plan and identified its procurement plans, implementation plan, contingency plans, and rate design for the recovery of costs. *See* Petition at 5.

A. Constellation’s Limited Participation as a Non-Testifying Intervenor

On March 16, 2026, Constellation intervened in this proceeding. Constellation filed, on April 29, 2026, a letter with the ALJs confirming that it would not be submitting Direct Testimony in the proceeding, though it reserved the right to submit Rebuttal and Surrebuttal Testimony.¹ Constellation is a member of the Retail Energy Supply Association (“RESA”), which did file direct testimony in this proceeding. However, RESA’s intervention petition expressly stated that RESA’s comments represent the position of RESA as an organization but may not represent the views of any particular member of the Association. *See* Docket No. P-2026-3060298, *RESA Petition to Intervene* (March 17, 2026), at 4. In Constellation’s own petition to intervene, Constellation noted it was “still formulating a position on the proposed DSP VII Petition” and would “finalize its positions after an opportunity to further study and evaluate the filing, conduct discovery, and obtain additional information, as necessary”² and noted that its interests “may be directly affected” and “*not adequately represented by existing participants*, as to which the petitioner may be bound by the action of the Commission in the proceeding.”³ Constellation has always participated in this

¹ *See* Docket No. P-2026-3060298, *ALJ Letter* (April 29, 2026) at 1.

² *See* Docket No. P-2026-3060298, *Constellation Petition to Intervene* (March 16, 2026) at *9.

³ *Id.* at *5 citing Pa. Code § 5.72(a)(1).

proceeding as its own entity to represent its own rights and conduct its own analysis, regardless of RESA's petition to intervene the following day.⁴

B. Constellation and OCA Held a Conference Call In Order to Discuss and Attempt to Resolve the Objections.

On May 4, 2026, the OCA served OCA Set 6 on Constellation. On May 13, 2026, counsel for Constellation sent OCA an email notifying the OCA that Constellation will be objecting to OCA's Set 6. On May 13, 2026, counsel for Constellation and OCA held a conference call to discuss the Objections and attempted to resolve the Objections (the "May 13 Conference Call"). During the May 13 Conference Call, OCA agreed to withdraw OCA Set 6, Request No. 1. On May 14, 2026, Constellation properly served its responses to the remaining OCA Set 6 requests, with its objections to certain questions specified as had been previously discussed between the parties. In its Motion, the OCA argues that despite this discussion, OCA Set 6, Request No. 3 was "incomplete" and "improperly asserted objections." OCA Motion at 5-6. Constellation had a subsequent conference call on May 27, 2026 (the "May 27 Conference Call"), before the OCA filed its rebuttal testimony, during which it offered to provide the OCA with Constellation's template renewable energy contract and current count of customers on a renewable product.

III. ARGUMENT

A. Constellation Properly Responded to Interrogatory No. 3 from OCA Set 6 and No Further Information is Necessary for OCA's Position

52 Pa. Code § 5.321(c) defines the permissible scope of discovery in proceedings:

Scope. Subject to this subchapter, a party may obtain discovery regarding any matter, **not privileged**, which is **relevant to the subject matter involved in the pending action**, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books,

⁴ Several suppliers had filed petitions to intervene prior to Constellation, including Town Square Energy and Town Square, among others.

documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

OCA Set 6, Request No. 3 asks: “Does Constellation offer a renewable energy product? If so, provide the contract for such a product and the number of residential customers served by each FE EDC.” In response, with its Objection, Constellation provided that it “does offer a renewable energy product to Pennsylvania residential customers. Currently, there are customers across the FE EDCs on a renewable energy product that Constellation serves.” *See* Response to OCA Interrogatory No. VI-3. In addition, during the May 27 Conference Call, Constellation informed the OCA that it would be willing to provide the current contract template for its renewable energy product, as well as the current number of customers presently on the renewable product. This information, paired with Constellation’s affirmative response to OCA Interrogatory No. VI-3 directly addresses the OCA’s stated need to understand “scope of customer participation in renewable products and the contractual representations being made to Pennsylvania consumers.” *See* OCA Motion at 9. Constellation’s willingness to produce current data is a reasonably-scoped response that satisfies the interrogatory’s legitimate purpose.

Moreover, the request itself is moot at this time. The OCA filed its rebuttal testimony on May 28, 2026 — two days after filing its Motion — without Constellation’s historical data. OCA Witness Ms. Alexander’s testimony extensively analyzes EGS renewable offerings, pricing, and customer impacts using data from other sources. If the OCA can file detailed rebuttal testimony⁵

⁵ In fact, OCA Witness Ms. Alexander conducted an independent review of EGS offers advertised on the Commission’s PaPowerSwitch web portal, analyzed other EGS contract terms behind renewable energy offers, quoted directly from AEP Energy and American Electric Rates LLC’s terms of service, analyzed NRG Home and Reliant Energy’s variable rate offers, First Energy’s own data on supplier charges, and cited to Town Square’s confidential discovery data. OCA Statement No. 2R (Rebuttal, Alexander) at 11, 13-17, 19-20, 26, 27, 52, 48, 55,

on these exact issues without Constellation's data, the data is demonstrably not “necessary” for the OCA's case.⁶

The OCA’s filing makes it clear that it did not, and does not, require Constellation’s historical data—nor does it require the additional current customer count or contract template offered—in order to fully make its argument.

B. The Requested Historical Data Does Not Add Any Value to the OCA’s Case.

The OCA requests the information sought through Interrogatory VI-3 in order to evaluate RESA’s claim that customers actually choose renewable products. Specifically, in its Motion, OCA argues that because RESA and other EGSs challenged certain provisions related to the FirstEnergy’s proposal to prohibit certain EGS products priced above the applicable Price to Compare from the Purchase of Receivables program, where RESA and the other EGSs claimed that certain customers knowingly choose to pay more for EGS products that are renewable, that Constellation’s data will go “directly to these issues.” Motion at 9. Constellation’s response is sufficient to demonstrate that Constellation customers use the product. A historical lookback at the number of customers enrolled on the renewable product does not offer any additional analysis relevant or helpful to the proceeding.

The Commission has previously held that “the standard for discovery is relevance, not curiosity”⁷ when denying the OCA’s motion to compel production of a company’s board minutes without the OCA having a clear understanding of whether the information therein would be helpful to its case. The Commission is evaluating a *prospective* DSP for June 2027-May 2031 and considering whether certain customer protections should apply going forward. Whether Constellation had 50 or 500 customers on a renewable product in March 2024, for instance, does

⁶ See generally OCA Statement No. 2R (Rebuttal, Alexander), Exhibits BA-8 through BA-15.

⁷Docket No. R-2011-2232243, *Pa.-Am. Water Co* (Interim Order entered July 21, 2011).

not inform that forward-looking determination. Here, OCA requests historical data out of curiosity, but only the current data is relevant to determine whether customers presently choose renewable products.⁸

C. The OCA's Request is Unreasonably Scoped and Would be Unduly Burdensome for Constellation to Compile.

52 Pa. Code § 5.361(a)(2), (4) prohibits discovery that would cause unreasonable burden or expense or that would require unreasonable investigation. Compiling this information is unreasonable for a non-testifying party. The requests for historical data in OCA VI-3 would require Constellation to compile or create new datasets, summaries, or analyses not currently maintained in the ordinary course of business. There is no justification for requiring Constellation to undertake such an exhaustive review of its databases in order to provide information that has already been provided to the OCA by other parties, notably by the parties that made the claims in which OCA takes issue.

The Commission has previously “sustained interrogatory objections when the interrogatories are relevant to other proceedings and create an undue burden in the proceeding at hand.”⁹ Constellation’s historical data regarding customers on its renewable energy plan is unrelated to the 2027 – 2031 FirstEnergy DSP and would be better suited to be a topic in another proceeding where Constellation’s renewable offerings are at issue or in question.

As discussed above, Constellation did not advance any claim related to whether customers knowingly choose higher-priced products because of a renewable offering. The OCA is clearly attempting to test the arguments made by RESA and others, and in doing so, is conflating trade-

⁸ See also Docket No. M-00001353, *Re Structural Separation of Bell Atlantic-Pennsylvania, Inc.*, at *7-9 (Order entered Sept. 28, 2000) (ALJ rejecting evidence as “beyond the scope of the proceeding.”); Docket Nos. R-00932670 et al., *Pa. P.U.C. v. Pa.-Am. Water Co.* (Order entered July 26, 1994) (ALJ concluding that the issues raised were “outside the scope of this investigation”); *Re Gas Cost Rate No. 5*, 57 Pa. P.U.C. 158, 160 (1983) (testimony stricken as addressing “matters broader than the scope of the instant proceeding.”)

⁹ Docket No. C-2014-2431410, *Hiko Energy LLC* (Interim Order entered December 30, 2014).

association advocacy—that explicitly disclaims speaking for all member suppliers—with party-specific testimony. The Motion relies on *RESA*'s testimony and points to a Constellation attorney's position within *RESA*'s Executive Committee, but fails to identify any Constellation-specific testimony or statements to which it is responding. That is because no such Constellation-specific testimony or statement exists regarding the issue.

The OCA is engaging in a fishing expedition:¹⁰ it received the information necessary to confirm that there *are* customers on Constellation's renewable product offering yet seeks to probe specific and detailed historical data that is not at issue in this proceeding. OCA is able to—and based on the rebuttal testimony it filed on May 28, 2026, has—obtained the information it seeks from *RESA* and the witnesses and parties that actually sponsored those positions. It is a clear overreach to burden Constellation with excessive data production, particularly when such production would necessarily require in-depth examination and analyses by multiple of Constellation's business groups in order to mitigate the competitive risk that disclosure of this information would create. Forcing Constellation to provide this data in response to a clear fishing expedition would have a chilling effect on stakeholder participation in future proceedings. The Commission benefits from the participation of diverse voices in its proceedings, and compelling non-testifying intervenors to undertake burdensome data production untethered to any claim they advanced would signal that participation carries an unreasonable risk of intrusive discovery obligations. The Commission should not send such a signal, and it is for precisely this reason that the ALJs and Commission do not permit the forced production of unnecessary information.

¹⁰ See *Stahl v. First Pa. Banking & Trust*, 411 Pa. 121 (1963).

a. The Burden is Disproportionate to the Potential Value Received.

It is well established that “[t]he Commission has the right to limit discovery that would place an unreasonable burden upon a participant in litigation.”¹¹ In addition, discovery that “would cause unreasonable annoyance, embarrassment, oppression, burden or expense” or “would require the making of an unreasonable investigation” is prohibited.¹² In fact, even where protective orders are in place, 52 Pa. Code § 5.362 (Protective Orders) subsection (a)(1) provides that discovery “shall be prohibited” as the first optional remedy to the production of discovery where “justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, burden or expense.”

Constellation’s production of the information would include compiling 28 months of customer count data, broken down by four separate EDC service territories as a non-testifying intervenor that did not place its operations at issue. This must be balanced against the marginal, at best, benefit to the OCA where the OCA already has: (a) the PaPowerSwitch compilation of all EGS renewable offers (Exhibit BA-8); (b) detailed pricing and customer data from Town Square; (c) similar interrogatory responses from the EGS Parties, Town Square, and WGL Energy Services; and (d) FirstEnergy’s own aggregate data on EGS customer counts and pricing.

D. The Historical Data Reveals Constellation’s Competitive Position.

If Constellation were to produce monthly customer counts broken down by EDC territories since 2024, the data would reveal Constellation’s market penetration in each service territory, its growth or decline trajectory by service territory, and which service areas Constellation may have successfully entered versus where it is currently weak. The information would additionally signal

¹¹ *City of Pittsburgh v. Pa. PUC*, 526 A.2d 1243, 1249-50 (Pa. Cmwlth. 1987).

¹² 52 Pa. Code § 5.361(a)(2), (4).

where Constellation’s growth efforts are focused. Disclosure of such information would undoubtedly cause competitive harm.

The Commission has previously found, and the Pennsylvania Commonwealth Court has affirmed, that there is a competitive disadvantage for companies where their granular data is forced to be provided, as compared to aggregate data. Specifically, in *Lyft, Inc. v. Pa. PUC*, the Court agreed with the Commission’s finding that aggregate data surrounding Lyft’s trips that were *not* “the number of rides in a particular market or the concentration of pick-ups and drop-offs in specific segments of that market”¹³ did not put Lyft at a competitive disadvantage. However, here, OCA requests in depth and specific data that would reveal Constellation’s commercial standing and put Constellation at significant risk. In this proceeding, Constellation’s direct competitors are participants and parties. These parties could access any production, and such access even under a protection order does not protect Constellation’s business interests. In fact, the court in *Micro Motion, Inc. v. Kane Steel Co.* acknowledged that competitive business interests are likely put at risk despite a protective order where competitors are able to access such competitively sensitive information.¹⁴

The historical EDC-by-EDC data is not necessary when Constellation informed the OCA that are current Constellation customers on renewable products and voluntarily offered the current data that answers the OCA's actual question. It would be “divorced from reality” to believe that

¹³ *Lyft, Inc. v. Pa. PUC*, 145 A.3d 1235, 1242–43 (Pa. Cmwlth. 2016); *see also* Docket No. P–00991752, *In re Exelon*, 2000 WL 1510088 (filed July 20, 2000).

¹⁴ *See Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318, 1325 (Fed. Cir. 1990) (a “protective order is not a substitute for establishing relevance or need. Its purpose is to prevent harm by limiting disclosure of *relevant* and *necessary* information... It would be divorced from reality to believe that either party here would serve as the champion of its competitor K-Flow either to maintain the confidentiality designation or to limit public disclosure as much as possible during trial”) (emphasis in original).

other parties in the proceeding would not benefit, at Constellation’s disadvantage, if the complete historical information was provided.¹⁵

E. Constellation Acted in Good Faith and Within Substantial Compliance to the Procedural Rules.

The Commission has previously upheld an ALJ's exercise of discretion in limiting discovery, finding “no abuse of discretion” and that the ALJ's “discretion to limit the scope and receipt of evidence is well settled.”¹⁶ Under 52 Pa. Code § 5.483(a), the presiding officer has “the power to... impose reasonable limitations on discovery and to otherwise regulate the course of the proceeding.” The ALJs retain authority to deny the Motion on substantive grounds regardless of any timeliness finding. The OCA conflates the minor delay in communication with a complete waiver, when in fact a procedural defect in the form or timing of an objection does not automatically constitute waiver of the right to object. 52 Pa. Code § 1.2(a)¹⁷ grants the Commission and ALJs discretion to disregard procedural defects, and the Commonwealth Court has sustained the Commission’s authority under § 1.2(a) to disregard procedural errors that do not affect substantive rights.¹⁸ Notably, 52 Pa. Code § 5.342(g) provides that “[i]f a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn,” but no corresponding provision applies to deem an objection waived based on an objecting party’s failure to strictly comply with form or timing requirements.¹⁹

¹⁵ See generally *id.*

¹⁶ C-2020-3017229, *Verde Energy* (Commission Opinion issued Sept. 15, 2022), at 34.

¹⁷ 52 Pa. Code § 1.2(a) states “[t]his title shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.”

¹⁸ See *AT&T Communications of Pennsylvania v. Pa. PUC*, 568 A.2d 1362, 1364 (Pa. Cmwlth. 1990); Docket No. C-00934817, *Big Apple Dinner Theater, Inc. v. Bell of Pennsylvania* (Opinion and Order entered April 30, 1993).

¹⁹ The Prehearing Conference Order in this proceeding states that unresolved objections “shall be served in writing to the propounding party within five (5) calendar days of service” but does not include an automatic waiver of objections based on failure to serve written objections within five calendar days.

As stated previously, Constellation communicated its objection by email on May 13, 2026, and the May 13 Conference Call was held the same day. The parties resolved three of four objections, with the OCA withdrawing OCA Set VI-1. The OCA has not filed a motion to compel, or discussed further, the two remaining interrogatories following the May 13 or May 27 Conference Calls. While not within the strict three-day oral objection window, this engagement served the purpose of the expedited schedule. Under 52 Pa. Code § 1.2(a), the Commission may “disregard an error or defect of procedure which does not affect the substantive rights of the parties.” No prejudice resulted — the OCA filed rebuttal testimony two days later. OCA was a willing participant in the May 13 and May 27 Conference Call discussions, and OCA did not agree to Constellation’s May 27 Conference Call offer to provide additional information, despite Constellation’s attempt to provide the OCA with additional information prior to OCA filing its rebuttal testimony. As discussed, however, such information was not necessary in order for the OCA to fully make its argument. Such events should make it clear that OCA was not procedurally harmed by Constellation’s delayed communication regarding the planned objection. Therefore, there is no reason to compel baseless requests for information where no harm to any substantive right resulted.

IV. CONCLUSION

Constellation is a non-testifying intervenor that advanced no claim on the issue the OCA seeks to probe. Constellation offered the OCA to provide the current contract template and current customer count. The OCA declined that offer, filed its Motion, and then filed detailed rebuttal testimony two days later using data from other parties and public sources without needing any contribution from Constellation. The balance of burden for Constellation and OCA’s marginal benefit, if any, is clearly skewed—OCA’s requested historical data is unnecessary, irrelevant to the forward-looking FirstEnergy DSP VII proceeding, unduly burdensome for a non-testifying party

to compile, and would expose competitively sensitive information to Constellation's direct competitors. Granting the Motion would signal that mere participation in Commission proceedings subjects intervenors to fishing expeditions into their proprietary operations—a result that would chill the broad stakeholder engagement from which the Commission benefits.

WHEREFORE, for all the foregoing reasons, Constellation respectfully requests that the OCA's Motion to Dismiss Objections and to Compel be denied in its entirety, and that Constellation's Objections to OCA Interrogatory Set 6, Request No. 3 be sustained. In the alternative, should the Administrative Law Judges determine that any production is warranted, Constellation requests that such order be limited to the current contract template and current customer count it has already offered to provide the OCA during the May 27 Conference Call, subject to the existing Protective Order.

Respectfully submitted,

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Constellation NewEnergy, Inc.*

Dated: May 29, 2026

VERIFICATION

I, Marsha D. Makel, counsel for Constellation Energy Generation, LLC and Constellation NewEnergy, Inc., 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 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

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Dated: May 29, 2026