

**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 to : P-2026-3060298
May 31, 2031 :

**FOURTH INTERIM ORDER
GRANTING IN PART AND DENYING IN PART
MOTION TO COMPEL ANSWERS TO DISCOVERY**

Before us is the Motion to Dismiss Objections and to Compel Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. to Answer Interrogatories filed by the Office of Consumer Advocate (Motion).

The procedural history of this matter, relevant to disposing of this Motion, is as follows. On March 27, 2026, the presiding officers issued a Protective Order.

Non-Petitioner parties, including the Office of Consumer Advocate (OCA), submitted Direct Testimony on April 29, 2026.¹

On May 4, 2026, the OCA served OCA Set 6 on Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. (Constellation). Pursuant to the Commission’s discovery rules, as modified by the presiding officers in this proceeding,²

¹ The following parties also served Direct Testimony on April 29, 2026: Office of Small Business Advocate (OSBA); Solar Energy Industries Association and Coalition for Community Solar Access (collectively, “Joint Solar Advocates”); Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Sunrise Airport Road LLC, Sunrise Forrester Road LLC, Sunrise Franklin Road LLC, Sunrise Harlansburg Road LLC, Sunrise Hendersonville Road LLC, Sunrise McCurdy Road LLC, Sunrise Perry Highway LLC, Sunrise Sandy Lake Greenville Road LLC, Sunrise Sandy Lake Polk Road LLC, and Sunrise Springfield Church Road LLC (collectively, “CGC”); Town Square Energy East, LLC; and Retail Energy Supply Association (RESA).

² Tr. 34; Prehearing Order at 7 (issued Mar. 23, 2026).

Constellation’s oral objections were due by May 7, 2026 (three calendar days), written objections were due by May 11, 2026 (five calendar days), and responses were due by May 14, 2026 (ten calendar days). On May 14, 2026, Constellation filed a certificate of service for its responses to OCA Set 6.

On May 26, 2026, OCA filed the instant Motion. A full copy of Constellation’s responses to the OCA’s Set 6 discovery requests was attached as Appendix A to the Motion. In the Motion, the OCA avers that counsel for Constellation sent OCA an email, on May 13, 2026, notifying the OCA that Constellation would be objecting to OCA’s Set 6 Interrogatories in their entirety. On May 13, 2026, the OCA states that counsel for Constellation and OCA held a conference call to discuss the objections and attempted to resolve the objections without the need for a motion to compel, during which the OCA agreed to withdraw OCA Set 6, No. 1. Further, the OCA avers that the responses that Constellation provided to the remainder of OCA Set 6 were incomplete and improperly asserted objections, in part, to OCA Set 6, No. 3. Through its Motion, the OCA seeks a full and complete response to OCA Set 6, No. 3.

On May 28, 2026, the OCA submitted Rebuttal Testimony.³

On May 29, 2026, Constellation filed its Answer to the OCA’s Motion. In its Answer, Constellation acknowledges it did not strictly comply with all procedural deadlines but contends that it did not waive its objections, and that its objections should be heard on the merits, which support denial of the Motion.

As set forth in Section 5.321(c) of the Commission’s Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.321(c), specifically provides that “a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” Discovery is permitted regardless of whether the information sought “relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant.” *Id.* Information may be discoverable, even if it would be

³ FirstEnergy Pennsylvania Electric Company (FE PA), OSBA, Joint Solar Advocates, CAUSE-PA, CGC, and RESA also submitted Rebuttal Testimony.

inadmissible at a hearing. “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.” *Id.* Consistently, the Commission has allowed participants wide latitude in discovery matters. Pa. P.U.C. v. The Peoples Natural Gas Co., 62 Pa. PUC 56 (Aug. 26, 1986); and Pa. P.U.C. v. Equitable Gas Co., 61 Pa. PUC 468 (May 16, 1986).

OCA Set 6, No. 3, and Constellation’s response are as follows:

OCA Interrogatory No. VI-3:

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 for the period January 2024 to the present.

Response to OCA Interrogatory No. VI -3:

Constellation has objected to providing the requested contracts and the requested information for the time period of January 2024 to the present. Notwithstanding these objections and without waiving its rights, Constellation answers as follows: Constellation 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.

Motion, App. A.

In support of its Motion, the OCA states that RESA filed direct testimony advancing arguments regarding consumer preferences for renewable products and the asserted benefits of allowing customers to remain on electric generation supplier (EGS) products without affirmative consent. According to the OCA, “[t]he interrogatory seeks information necessary to evaluate those claims including the scope of customer participation in renewable products and the contractual representations being made to Pennsylvania consumers.” Motion at 9. Further, the OCA contends that the requested contracts and customer counts are reasonably calculated to lead to the discovery of admissible evidence concerning the actual nature and value of the renewable products being offered. As such, it argues that the requested information is “directly relevant to assessing RESA’s and electric generation suppliers’ assertions regarding customer preferences, renewable content, consumer benefits, and the justification for opposing

FirstEnergy’s proposed customer protections.” Motion at 9. The OCA notes that it sent the same interrogatory to all EGS intervenors in this proceeding.

Constellation opposes production of the information requested in OCA Set 6, No. 3, on the basis, *inter alia*, that the historical data would expose Constellation’s competitive position to its direct competitors. It argues:

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 where Constellation’s growth efforts are focused.

Answer at 9-10. Additionally, Constellation argues that it would be unduly burdensome for it, as a non-testifying party, to compile the information when balanced against the benefit to the OCA. Constellation asserts that the requested historical data would require it to “compile or create new datasets, summaries, or analyses not currently maintained in the ordinary course of business.”

Answer at 7. Constellation also states that it has already offered to provide OCA with current data – specifically, the current contract template for its renewable energy product, as well as the current (aggregate) number of customers presently on the renewable product. As such, Constellation argues that this information satisfies the OCA’s stated need, and that “a historical lookback at the number of customers enrolled does not offer any additional analysis relevant or helpful to a forward looking proceeding.” *Id.* at 6-7.

The OCA’s Motion will be granted in part and denied in part. We will compel production of Constellation’s current contract template for its renewable energy product, and the aggregate number of FE PA residential customers presently on the renewable energy product. This information appears reasonably calculated to lead to the discovery of admissible evidence and, moreover, Constellation has not shown that its concerns raised regarding exposure of competitively sensitive information or undue burden apply.

We are not persuaded that historical data would contribute no additional, relevant or helpful analysis to this proceeding. However, in the instant circumstances, we will balance the concerns raised by Constellation by requiring it to produce historic data sufficient to provide some context for the current customer count. Accordingly, in the Ordering Paragraphs below, Constellation will be directed to produce the aggregate number of FE PA residential customers on a renewable energy product served by Constellation, for the most recent month for which data is available and for the same month in 2024 and 2025. We find that aggregation of the data, in addition to the terms of the Protective Order issued on March 27, 2026 will provide sufficient protection to the information at issue.

THEREFORE,

IT IS ORDERED:

1. That Constellation Energy Generation, LLC and Constellation NewEnergy, Inc.'s objections to the Office of Consumer Advocate's Interrogatory, Set 6, No. 3 are granted in part and denied in part.
2. That the Motion of the Office of Consumer Advocate to Dismiss Objections and to Compel Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. to Answer Interrogatories is hereby granted in part and denied in part, as follows:
 - a. Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. shall provide Constellation's current contract template for its renewable energy product.
 - b. Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. shall provide the aggregate number of FirstEnergy Pennsylvania Electric Company residential customers on a renewable energy product served by Constellation, for the most recent month for which data is available in 2026 and for the same month in 2024 and 2025.

3. That Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. shall provide responses consistent with Ordering Paragraph 2 within three (3) calendar days of this interim order.

Date: June 3, 2026

_____/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge

_____/s/
Erin L. Gannon
Administrative Law Judge

P-2026-3060298 - PETITION OF FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY FOR APPROVAL OF DEFAULT SERVICE PROGRAM

Revised April 7, 2026

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