July 22, 2026

<u>VIA eFiling</u>

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 for filing in the above-referenced proceeding is the Certificate of Service evidencing service of the Reply Brief of Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. As indicated in the Certificate of Service, copies have been served upon all parties of record.

If you have any questions, please contact me directly at (267) 533-5387.

Best Regards,

Marsha D. Makel

Marsha D. Makel,
Assistant General Counsel

Enclosures
cc: Per Certificate of Service (w/encls.)

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 Section 1.54.

Dated this 22nd day of July, 2026

VIA ELECTRONIC MAIL

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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

REPLY BRIEF OF CONSTELLATION ENERGY GENERATION, LLC AND CONSTELLATION NEWENERGY, INC.

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Date: July 22, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITES

Administrative Case

Statutes

Regulations

I. INTRODUCTION

In its Main Brief, Constellation Energy Generation, LLC ("CEG") and Constellation NewEnergy, Inc. ("CNE") (collectively "Constellation"), explained why it urges the Administrative Law Judges ("ALJs") to reject the Non-Unanimous Settlement and deny the waiver of Section 54.10(3) as it contains unlawful provisions and is not in the public interest.

Constellation addressed many of the arguments in its Main Brief and incorporates those arguments herein. This Reply Brief is narrowly focused on responding to FE PA, the Office of Consumer Advocate ("OCA") and CAUSE-PA's ("Joint Proponents") brief in support of the Non-Unanimous Settlement and in support of a waiver of Section 54.10(3).

II. SUPPLIER COORDINATION TARIFF CHANGES AND RETAIL SHOPPING ISSUES

> "When a customer fails to respond to either notice, the following apply: (i) A fixed duration contract shall be converted to one of the following: (A) A month-to-month contract, either at the same terms and conditions or at revised terms and conditions, as long as the contract does not contain cancellation fees. (B) Another fixed duration contract, as long as the new contract includes a customer-initiated cancellation provision that allows the customer to cancel at any time, for any reason, and does not contain cancellation fees. (ii) The converted contracts shall remain in place until the customer chooses one of the following options: (A) Select another product offering from the existing EGS. (B) Enroll with another EGS. (C) Return to the default service provider."[1]

Section 54.10(3) already decides what happens when a customer chooses not to respond: the customer remains with the EGS unless and until the customer chooses another option. These regulations were adopted after a thorough review and rejection of the same arguments that FE PA has made in this case.[2] The requested waiver would reverse that established rule, not merely clarify it.

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[1] 52 Pa. Code § 54.10(3).

[2] Constellation Main Brief at 10; RESA St. No. 1 at 15.

A. Affordability Claims Do Not Justify Waiver of Section 54.10(3)

The Joint Proponents repeatedly assert that customers should be returned to default service because some customers *may* pay prices above default service after expiration of a fixed-term contract and because returning customers to default service would allegedly promote affordability.[3] However, affordability alone does not justify waiver of an existing Public Utility Commission ("Commission") regulation or establish that the proposed change is in the public interest.[4]

The fundamental flaw in the Joint Proponents' position is their assumption that a customer who does not respond to contract-expiration notices has not made a conscious decision. The Commission's existing regulations reflect the opposite conclusion. Section 54.10 expressly contemplates that a customer may receive renewal notices, decline to take further action, and continue service under a converted contract.[5] The regulation therefore already embodies a policy determination by the Commission that customer inaction following proper notice does not invalidate the customer's affirmative supplier choice.[6]

The presumption by the Joint Proponents is that customer silence reflects confusion, lack of understanding, or the absence of meaningful consent. However, no witness identified any evidence showing that customers who receive the required notice fail to understand them, fail to review them, or are unable to act upon them. Instead, the Joint Proponents simply assume that if a customer does not respond to a renewal notice, the customer has not

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[3] OCA Main Brief at 38; OCA St. 2R at 5; CAUSE-PA Main Brief at 20; FE PA Initial Brief at 47.

[4] *Petition of PPL Electric Utilities Corp. for Approval of Its Default Service Plan for the Period June 1, 2021 Through May 31, 2025*, Docket No. P-2020-3019356, Opinion and Order at 95-98 (Order entered Dec. 17, 2020); *Petition of PECO Energy Company for Approval of Its Default Service Program for the Period From June 1, 2025 Through May 31, 2029*, Docket No. P-2024-3046008, Opinion and Order at 78-81 (Order entered Nov. 7, 2024). ("*PECO DSP VI*")

[5] 52 Pa. Code § 54.10(1)-(3).

[6] 52 Pa. Code § 54.10(1)-(3)(ii)(A)-(C).

made a decision.[7] That assumption is neither supported by the record nor consistent with the Commission's regulatory framework.

B. Customers Already Provide Affirmative Consent When They Enter the Contract

The Joint Proponents' frame the issue as one of obtaining "affirmative consent" at contract expiration. However, customers already provide affirmative consent when they enroll with an EGS and enter into a contract governed by Pennsylvania law and Commission regulations.

At the time of enrollment, customers knowingly select a competitive supplier and enter into an agreement that is subject to the renewal provisions established by Sections 54.10. They receive contractual disclosures and are informed that renewal notices will be provided prior to expiration of the contract term.[8] Customers therefore understand from the outset that their contract may continue following expiration pursuant to the Commission approved renewal framework.

The relevant question is not whether a customer provides a second affirmative consent at renewal. Rather, the pertinent question is whether the customer received the notices required by Commission regulations and was afforded a meaningful opportunity to make an alternative choice. Section 54.10 already directly addresses that issue by establishing the consequences that apply when a customer receives notice and elects not to take action.

Nothing in the record establishes that customers are unaware of these notices or incapable of acting upon them. The Joint Proponents merely disagree with the result that occurs when customers choose not to act.

C. The Existing Notice Framework Ensures Customers Can Make an Informed Decision

CAUSE-PA characterizes customers as being "passively rolled" into new pricing.[9]

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[7] FE PA Initial Brief at 47-49; OCA Main Brief at 36-39; CAUSE-PA Main Brief at 20-23.

[8] 52 Pa. Code § 54.5 and 10(1)-(3).

[9] CAUSE-PA Main Brief at 20.

That description ignores the extensive consumer protection measures already contained in the Commission's regulations.

Under existing rules, customers receive contract expiration notices informing them of the impending expiration of the contract and the terms that will apply after expiration.[10] As Constellation explained in its Main Brief, the current framework already requires disclosure of renewal terms and permits customers to leave without cancellation fees.[11]

Those notices serve an important purpose: they provide customers with information and an opportunity to act or not to act. Customers can remain with the existing supplier by not taking any action, select another supplier, or return to default service. The fact that a customer chooses not to exercise those options means that the customer has actively made a decision and the customer declined to alter the supplier relationship already established through the customer's prior affirmative choice.

FE PA, OCA, and CAUSE-PA ask the Commission to treat customer inaction as evidence of misunderstanding. The Commission should reject that premise. Customers routinely make decisions by choosing not to change an existing arrangement after receiving notice of available alternatives. There is no record evidence demonstrating that customers receiving Section 54.10 notices are incapable of making that determination for themselves.

D. The Public Interest Standard is Not Satisfied By Assumptions About Customer Preferences

Most importantly, the Joint Petitioners invite the Commission to substitute their judgment for the judgment of individual customers.

OCA argues that customers who do not respond should be returned to default service because default service may be cheaper than competitive supply. CAUSE-PA similarly contends that customers should default to utility service unless they affirmatively elect otherwise because that outcome may be preferable from an affordability perspective.

But neither OCA nor CAUSE-PA can determine what is in the best interest of every

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[10] 52 Pa. Code § 54.10(1)-(3).

[11] Constellation Main Brief at 4, FN 6.

customer. As the Commission previously recognized, customers may select EGS products for reasons other than an immediate price comparison, including product attributes, price and contract stability, renewable content, value-added services, or other features.[12]

The public interest is not served by invalidating an existing customer choice simply because a utility or an intervenor believes another choice could be preferrable. Nor is the public interest served by presuming that a customer who receives notice and elects not to act somehow lacks understanding of the consequences of that decision.

If the Commission were to accept that rationale, any customer decision that differs from the preference of a utility, consumer advocate, or intervenor could be disregarded. That result would be fundamentally inconsistent with the Competition Act's core premise that the ultimate choice of electric supplier rests with the customer.[13]

III. CONCLUSION

The Commission should reject the invitation to presume that customer silence equates to customer confusion or change of heart. The existing regulatory framework already contains multiple safeguards designed to ensure informed customer decision-making, including affirmative customer consent at enrollment, extensive disclosures during the contract term, and renewal notices before contract expiration. These requirements provide customers with real opportunities to review their options, evaluate available products, and take action if they wish to change suppliers or return to default service. Importantly, when a customer receives those notices and elects not to act, that inaction is itself a choice recognized by Section 54.10. FE PA, OCA and CAUSE-PA may disagree with that choice, but disagreement does not establish that a regulatory waiver is in the public interest or that existing consumer protections are inadequate.

Moreover, the requested waiver would effectively replace the Commission's longstanding preference for customer choice with a presumption that customers cannot be relied upon to make decisions for themselves absent additional intervention. The record

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[12] *PECO DSP VI at* at 43–47, 74–81, 89, Ordering ¶¶ 5–6.

[13] 66 Pa. C.S. §§ 2801 *et seq.*

contains no evidence demonstrating that customers that receive Commission-mandated notices lack understanding of their options, fail to receive the required disclosures, or are otherwise unable to make informed decisions regarding their electric generation service. Nor does the record establish that the existing renewal process has caused customer harm sufficient to justify departing from the requirements of Section 54.10.

For these reasons, the ALJs should recommend that the Commission reject the Non-Unanimous Joint Settlement return to default service provision and deny the requested waiver of 52 Pa. Code § 54.10(3).