

August 31, 2026

**VIA eFiling**

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 Exceptions 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 31st day of August, 2026

### VIA ELECTRONIC MAIL

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Date: August 31, 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 from June 1, 2027 through | : |                           |
| May 31, 2031                                     | : |                           |

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**EXCEPTIONS OF  
CONSTELLATION ENERGY GENERATION, LLC AND  
CONSTELLATION NEWENERGY, INC.**

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Date: August 31, 2026

## **TABLE OF CONTENTS**

|                                                                                                                                                                                                                                         |          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| <b>I. INTRODUCTION.....</b>                                                                                                                                                                                                             | <b>1</b> |
| <b>II. EXCEPTIONS.....</b>                                                                                                                                                                                                              | <b>2</b> |
| A. EXCEPTION NO. 1: The RD Errs in Concluding That the Proposed Return-To-Default-Service Requirement Preserves Customer Choice.<br>RD at 196-200; FOFs 92, 98-99; COLs 41, 42, 45; Ordering ¶¶ 1, 4, 8-9.....                          | 2        |
| B. EXCEPTION NO. 2: The RD Errs in Concluding That Automatic Return to Default Service Is Consistent with Pennsylvania’s Customer Authorization Requirements.<br>RD at 196-197; FOFs 92, 98-99; COLs 41-42; Ordering ¶¶ 1, 4, 8-9. .... | 3        |
| C. EXCEPTION NO. 3: The RD Errs in Granting a Waiver of 52 Pa. Code § 54.10(3).<br>RD at 197-200; 205; FOFs 92, 98-99; COLs 42, 46; Ordering ¶¶ 1, 4, 8-9.....                                                                          | 4        |
| D. EXCEPTION NO. 4: The RD Errs in Finding that the Record Establishes Customer Harm Caused by the Existing Renewal Framework.<br>RD at 198-200; FOFs 90, 93-99; COLs 42, 45-46; Ordering ¶¶ 1, 4, 8-9 .....                            | 5        |
| <b>III. CONCLUSION.....</b>                                                                                                                                                                                                             | <b>6</b> |

## **TABLE OF AUTHORITES**

### **Administrative Case**

|                                                                                                                                                                                                                                                                                  |   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| <i>Petition of the Boroughs of Camp Hill, Carlisle, Hatboro, Landsdowne, Media, Narberth, State College, and Swarthmore for a Declaratory Order Regarding the Implementation of Community Choice Aggregation,</i><br>Docket No. P-2024-304963 (Order entered Aug. 14, 2025)..... | 4 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|

### **Statutes**

|                               |         |
|-------------------------------|---------|
| 66 Pa. C.S. § 2804(2).....    | 1, 3, 6 |
| 66 Pa. C.S. § 2806(a).....    | 1, 3, 6 |
| 66 Pa. C.S. § 2807(d)(1)..... | 3       |

### **Regulations**

|                                   |         |
|-----------------------------------|---------|
| 52 Pa. Code § 54.5.....           | 3       |
| 52 Pa. Code § 54.10.....          | 1, 3, 6 |
| 52 Pa. Code § 54.10(3).....       | 5       |
| 52 Pa. Code §§ 57.171-57.180..... | 1, 4, 6 |
| 52 Pa. Code § 111.7.....          | 1, 3    |

## **I. INTRODUCTION**

Constellation Energy Generation, LLC (“CEG”) and Constellation NewEnergy, Inc. (“CNE”) (collectively, “Constellation”) respectfully submit these Exceptions to the Recommended Decision (“RD”) entered on August 21, 2026.

These Exceptions concern a narrow but important question presented by the RD: whether a residential customer who has already exercised the statutory right to select an Electric Generation Supplier (“EGS”) may be automatically returned to utility default service at the expiration of a fixed-term contract without providing any new authorization for that supplier change. The RD concludes that such a transfer is permissible because customers receive notice and remain free to shop. Constellation respectfully submits that the RD misunderstands both the nature of the customer’s existing supplier election and the statutory and regulatory framework governing customer choice.

Pennsylvania’s Electricity Generation Customer Choice and Competition Act (“Competition Act”) places the ultimate choice of electric generation supplier with the customer. The General Assembly provided that customers should be permitted to choose among competing suppliers and expressly stated that “the ultimate choice of the electric generation supplier is to rest with the consumer.”<sup>1</sup> The Commission implemented that statutory directive through detailed enrollment, switching, disclosure, notice, and renewal regulations. Those regulations recognize that a customer affirmatively chooses an EGS through the Commission-approved enrollment process and remains with that supplier unless the customer elects otherwise.<sup>2</sup>

The proposal approved by the RD fundamentally alters that framework. Instead of honoring the customer’s existing supplier election, the proposal treats customer inaction as authorization to terminate the customer’s chosen supplier relationship and substitutes utility default service. The customer has not selected a new supplier. The customer has not authorized a transfer. The customer has merely declined to take additional action after

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<sup>1</sup> 66 Pa. C.S. §§ 2804(2), 2806(a).

<sup>2</sup> 52 Pa. Code §§ 54.10, 57.171-57.180, 111.7.

already exercising the right to choose. Yet the RD allows that previously exercised choice to be overridden.

Constellation's Exceptions focus on four issues.

First, the RD errs in concluding that automatic return to default service preserves customer choice when the proposal replaces a customer's existing supplier election with a utility-selected default option.

Second, the RD errs in concluding that the proposal is consistent with Pennsylvania's customer authorization and supplier switching requirements.

Third, the RD improperly grants a waiver of 52 Pa. Code § 54.10(3) and effectively rewrites a statewide consumer-protection regulation through a utility-specific default service proceeding.

Fourth, the RD finds a causal connection between Pennsylvania's existing renewal framework and alleged customer harms that the record does not establish.

For these reasons, and those set forth more fully below, the Commission should sustain Constellation's Exceptions, deny the requested waiver of Section 54.10(3), and reject the portions of the Non-Unanimous Settlement that require automatic transfers from competitive supply to default service.

## **II. EXCEPTIONS**

### **A. EXCEPTION NO. 1: The RD Errs in Concluding That the Proposed Return-To-Default-Service Requirement Preserves Customer Choice. RD at 196-200; FOFs 92, 98-99; COLs 41, 42, 45; Ordering ¶¶ 1, 4, 8-9.**

The RD begins from an incorrect premise. The relevant question is not whether customers remain free to shop after being transferred to default service. The relevant question is whether a customer who has already exercised the statutory right to choose an EGS may have that choice displaced without providing any subsequent authorization for a supplier change.

The Competition Act unambiguously places supplier selection in the hands of the customer. Section 2804(2) requires that customers be permitted to choose among electric

generation suppliers in a competitive generation market.<sup>3</sup> Section 2806(a) goes further and expressly provides that “the ultimate choice of the electric generation supplier is to rest with the consumer.”<sup>4</sup>

A residential customer exercises that statutory right through the Commission’s enrollment process. Once enrolled, the customer receives disclosures, expiration notices, and renewal notices prescribed by Commission regulations.<sup>5</sup> The existing regulatory framework recognizes that the customer has already made an affirmative supplier election. It does not require the customer to repeatedly reaffirm that decision in order to preserve it.

The proposal approved by the RD reverses that long-standing framework. Instead of respecting the customer’s existing supplier relationship, it treats silence as authorization to terminate that relationship and return the customer to utility default service. The customer has not chosen default service. The utility has chosen default service on the customer’s behalf. That outcome cannot be reconciled with the Competition Act’s directive that supplier choice belongs to the customer.

The Commission should therefore reject the RD’s conclusion that the proposal preserves customer choice.

**B. EXCEPTION NO. 2: The RD Errs in Concluding That Automatic Return to Default Service Is Consistent with Pennsylvania’s Customer Authorization Requirements. RD at 196-197; FOFs 92, 98-99; COLs 41-42; Ordering ¶¶ 1, 4, 8-9.**

The RD also errs in concluding that the proposed transfer does not conflict with Pennsylvania’s supplier-switching protections.

Section 2807(d)(1) requires the Commission to ensure that customers are not switched from one supplier to another without the customer’s direct authorization.<sup>6</sup> The Commission implemented this requirement through detailed supplier-switching regulations designed to

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<sup>3</sup> 66 Pa. C.S. § 2804(2).

<sup>4</sup> 66 Pa. C.S. §§ 2804(2), 2806(a).

<sup>5</sup> 52 Pa. Code §§ 54.5, 54.10, 111.7.

<sup>6</sup> 66 Pa. C.S. § 2807(d)(1).

ensure that supplier changes occur only after appropriate customer authorization has been obtained.<sup>7</sup>

The proposal approved by the RD results in a change in supplier. A customer receiving generation service from an EGS will instead receive generation service through utility default service. The fact that the receiving provider is the utility's default service supplier rather than another EGS does not alter the substance of what occurred. The customer's source of generation supply changes.

The RD places significant emphasis on customer notice. However, notice is not consent. Providing notice that a supplier change will occur absent customer action is materially different from obtaining customer authorization for the supplier change itself. Pennsylvania law requires more than notice; it requires customer consent.

The Commission recently reaffirmed this principle in its Community Choice Aggregation Order,<sup>8</sup> where it recognized that supplier changes occurring without customer authorization would conflict with Section 2807(d)(1). The same principle applies here. The proposed transfer changes the customer's supplier without obtaining authorization for that change.

Accordingly, the Commission should reject the RD's conclusion that the proposal is consistent with Pennsylvania's customer authorization requirements.

**C. EXCEPTION NO. 3: The RD Errs in Granting a Waiver of 52 Pa. Code § 54.10(3). RD at 197-200; 205; FOFs 92, 98-99; COLs 42, 46; Ordering ¶¶ 1, 4, 8-9.**

The requested waiver should be denied because it effectively rewrites a statewide consumer-protection regulation through a utility-specific proceeding.

Section 54.10(3) reflects a policy determination previously made by the Commission through statewide rulemaking. The regulation establishes uniform procedures governing

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<sup>7</sup> 52 Pa. Code §§ 57.171-57.180.

<sup>8</sup> Community Choice Aggregation, Docket No. P-2024-304963, Opinion and Order at 68 (Aug. 14, 2025).

contract expiration and renewal for EGS customers throughout Pennsylvania.<sup>9</sup>

The waiver approved by the RD fundamentally changes that statewide framework. Rather than preserving a customer's existing supplier relationship following proper notice, the proposal adopts a different rule applicable only in FirstEnergy's territory. As a result, customer renewal rights and supplier obligations will vary depending on where the customer happens to reside.

Such a result creates unnecessary inconsistency, increases administrative complexity, and undermines the predictability that statewide regulations are intended to provide. If the Commission believes its existing renewal regulations warrant reconsideration, that issue should be examined in a proceeding involving all interested stakeholders and all affected service territories. A utility-specific DSP proceeding is not the proper vehicle to rewrite Pennsylvania's statewide contract-renewal rules.

For these reasons, the Commission should deny the requested waiver.

**D. EXCEPTION NO. 4: The RD Errs in Finding that the Record Establishes Customer Harm Caused by the Existing Renewal Framework. RD at 198-200; FOFs 90, 93-99; COLs 42, 45-46; Ordering ¶¶ 1, 4, 8-9**

Finally, the RD finds a causal connection that the record does not establish.

The RD relies on evidence relating to prices above the Price-to-Compare ("PTC"), termination rates, arrearages, uncollectibles, and complaints. Even assuming that those data accurately reflect the outcomes identified by the Settlement proponents, the record does not establish that those outcomes were caused by Pennsylvania's existing renewal framework or by Section 54.10(3).

The critical missing element is causation. The record may or may not demonstrate that certain shopping customers paid more than default service at a specific point in time. But the record definitely does not establish that customers experienced those outcomes because they remained with their chosen supplier after receiving renewal notices under the existing regulatory framework.

Nor does the record establish that automatic return to default service would remedy

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<sup>9</sup> 52 Pa. Code § 54.10(3).

those alleged harms. Indeed, the proposal applies even when an EGS offers a renewal price below the PTC. The proposal therefore reaches well beyond the conduct ostensibly identified as the justification for the waiver.

The Commission therefore lacks substantial evidence to conclude that Section 54.10(3) causes the harm identified by the RD or that overriding a customer's existing supplier choice is an appropriate remedy. Accordingly, the RD's findings concerning customer harm and the necessity of the proposed transfer mechanism should be rejected.

### **III. CONCLUSION**

The Recommended Decision departs from the fundamental principle upon which Pennsylvania's retail electric market is built: customer choice. The Competition Act places the ultimate choice of electric generation supplier with the consumer, and the Commission's regulations implement that directive through a comprehensive framework governing enrollment, supplier switching, contract renewals, and customer notices. Customers who enroll with an EGS have already exercised the statutory right to choose their supplier. The proposal approved by the RD replaces that existing customer election with a default-service outcome that occurs without any new customer authorization.<sup>10</sup>

For the reasons discussed above, Constellation respectfully requests that the Commission sustain these Exceptions; reject the Recommended Decision's approval of the automatic return-to-default-service requirement; deny the requested waiver of 52 Pa. Code § 54.10(3); reject Findings of Fact 90 and 92-99 and Conclusions of Law 41-46 to the extent identified above; decline to approve the corresponding provisions of Ordering Paragraphs 4, 8, and 9; and preserve Pennsylvania's existing customer-choice framework under which a customer remains with the supplier they affirmatively selected unless and until the customer directs otherwise.

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<sup>10</sup> 66 Pa. C.S. §§ 2804(2), 2806(a); 52 Pa. Code §§ 54.10, 57.171-57.180.

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Date: August 31, 2026