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September 11, 2026

Via Electronic Filing

Matthew Homsher, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Homsher:

Enclosed for electronic filing please find Spark Energy, LLC's ("Spark Energy") Petition for Reconsideration of the Commission's September 4, 2026 Secretarial Letter with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

DMO/dmc

Enclosure

cc: Honorable Mark A. Hoyer (*via email*)
Honorable Erin L. Gannon (*via email*)
Office of Special Assistants (*via email*)
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Spark Energy's Petition For Reconsideration, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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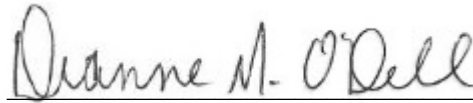
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Date: September 11, 2026

A handwritten signature in dark ink, reading "Deanne A. O'Dell". The signature is written in a cursive, flowing style. The first name "Deanne" is written with a large, looped 'D'. The middle initial "A." is written in a smaller, simpler script. The last name "O'Dell" is written with a large, looped 'O' and a distinct 'D'.

Deanne A. O'Dell

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

NOTICE TO PLEAD

TO: All Parties of Record

You are hereby notified that an answer to the enclosed Petition for Reconsideration of the of the Secretarial Letter Dated September 4, 2026 must be filed within 10 days of the date of service.

All pleadings, such as an answer to the enclosed filing, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Spark Energy, LLC and the Administrative Law Judge presiding over the proceeding.

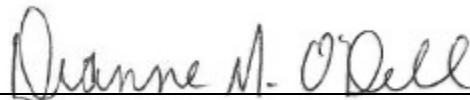
File with:

Matthew L. Homsher, Secretary
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With a copy to:

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Deanne M. O'Dell, Esquire

Counsel for Spark Energy, LLC

Date: September 11, 2026

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**SPARK ENERGY LLC’S PETITION FOR RECONSIDERATION OF
SECRETARIAL LETTER DATED SEPTEMBER 4, 2026**

Pursuant to 66 Pa. C.S. Section 703(g) of the Public Utility Code, 52 Pa. Code Sections 5.44 and 5.572 of the Pennsylvania Public Utility Commission's ("Commission") regulations, Spark Energy, LLC ("Spark") files this Petition for Reconsideration of the Commission's September 4, 2026 Secretarial Letter ("Secretarial Letter") denying Spark's Petition to Intervene Or, In the Alternative, Motion for Leave To Accept Exceptions. Specifically, Spark requests that the Commission reconsider and modify the Secretarial Letter by vacating its decision to strike Spark's timely-filed Exceptions and permitting the Commission's consideration of those Exceptions in connection with its review of the August 21, 2026 Recommended Decision ("RD") regarding the default service plan of FirstEnergy Pennsylvania Electric Company ("FirstEnergy"). Doing so will assist the Commission's review by permitting consideration of Spark's timely-filed, record-based legal objections before determining whether FirstEnergy's original challenged supplier tariff revisions—which neither the non-unanimous settlement nor the RD modified despite a fully litigated evidentiary record—should ultimately be adopted as final tariff provisions that will later be applied to Spark’s operations.

Spark seeks no reopening of the evidentiary record, no additional evidence, no additional briefing, and no delay in the Commission's consideration of the RD.¹ The Commission need not establish a general rule permitting non-parties to await a RD before filing exceptions by granting Spark's request here because the circumstances presented here are highly unusual. Throughout this proceeding, the Retail Energy Supply Association ("RESA") and multiple supplier parties vigorously litigated their objections to FirstEnergy's unprecedented proposed supplier tariff revisions through witness testimony, cross-examination, legal briefing, and advocacy before the Presiding Officers. Spark is a member of RESA. Despite that fully litigated evidentiary record, the RD recommends approval of those supplier tariff proposals as initially submitted without any modification. The RD, therefore, marked the first point at which Spark reasonably confronted the possibility that FirstEnergy's original challenged supplier proposals would be adopted without modification notwithstanding the fully developed evidentiary record supporting the supplier objections.

Having reviewed the RD considering the Commission's and Commonwealth Court's decisions in *Respond Power*,² Spark concluded that it could not prudently wait until after the Commission entered a final order approving the supplier tariff before presenting its legal objections. Doing so risked a later determination that, like *Respond Power*, Spark had forfeited

¹ See Spark Energy, LLC's Petition to Intervene or, in the Alternative, Motion for Leave to Accept Exceptions filed August 31, 2026 ("Spark Petition") at Paragraphs 4, 16-18. Spark Energy, LLC's Letter Response to Preliminary Objections dated September 2 2026 ("Spark Sept. 2, 2026 Letter") at 2; and, Spark Energy LLC's Answer to CAUSE-PA's Preliminary Objections and Request for Expedited Relief, filed September 4, 2026 ("Spark Answer") Paragraphs 19, 24, 33-35.

² *Respond Power, LLC v. Pennsylvania Public Utility Commission*, No. 260 C.D. 2020, filed Feb. 9, 2021, slip op. at 10-11 (Respond Power "failed to raise its objections ... when it had the opportunity to do so in the DSP IV proceedings"), affirming application of Section 316 to bar the later collateral attack.

its opportunity to challenge those supplier tariff provisions because it had not raised its legal objections before they became final. Spark, therefore, sought to timely present its legal objections during the only remaining procedural stage before entry of the Commission's final order. Spark respectfully requests that the Commission exercise its procedural discretion to consider those legal Exceptions under the unique procedural circumstances presented here. Doing so permits the Commission to consider Spark's legal objections before determining whether supplier tariff provisions that will govern Spark's operations become final.

This Petition also presents an important procedural question arising in this very proceeding. Infinity Capital, although not a party, filed exceptions without seeking intervention or leave to file.³ Those non-party exceptions have not been stricken from the record. Although FirstEnergy argues that Infinity Capital's non-party Exceptions should be disregarded, it nevertheless responds to the specific legal issues they raise.⁴ The differing procedural treatment of those non-party exceptions demonstrates that striking Spark's contemporaneously filed Exceptions was not procedurally inevitable. Spark, by contrast, acknowledged the procedural issue, affirmatively sought the Commission's procedural guidance through a Petition to Intervene and alternative Motion for Leave to Accept Exceptions, and then faced CAUSE-PA's additional request that its Exceptions be stricken. The Secretary granted that extraordinary procedural relief before Spark's response could be considered without explaining why immediate action was necessary. Under these unique circumstances, the Commission should not place a party that affirmatively sought the Commission's procedural guidance in a worse procedural position than a non-party that simply filed Exceptions without seeking such guidance.

³ Exceptions of Infinity Capital, LLC dated August 25, 2026.

⁴ FirstEnergy Reply Exceptions at 2-3 and 8-10.

In further support of this Petition, Spark states as follows:

I. BACKGROUND

1. FirstEnergy filed its Petition for approval of its Seventh Default Service Program ("DSP VII") on February 3, 2026. Following evidentiary hearings, several parties entered into a non-unanimous settlement that retained, without modification, numerous supplier-related tariff revisions originally proposed by FirstEnergy. On August 21, 2026, the Presiding Officers issued the RD, recommending approval of the non-unanimous settlement as filed and dismissal of the objections asserted by the non-settling parties. Pursuant to the accompanying Secretarial Letter, Exceptions to the RD were due August 31, 2026, and Reply Exceptions were due September 8, 2026.

2. On August 31, 2026, Spark filed a Petition to Intervene or, in the Alternative, Motion for Leave to Accept Exceptions, together with contemporaneously filed Exceptions directed solely to legal issues arising from the RD and the existing evidentiary record. Spark sought only limited participation in the Commission's review of the RD. It expressly represented that it sought no reopening of the evidentiary record, no additional discovery, no testimony, no hearings, and no delay in the Commission's consideration of the RD. In the alternative, if intervention were denied, Spark requested that the Commission nevertheless exercise its procedural discretion to accept and consider Spark's timely-filed, record-based legal Exceptions. Spark also acknowledged that its decision not to intervene earlier in the proceeding "was a judgment," but expressly stated that it did not offer that judgment as a complete excuse or contend that ordinary litigation strategy, standing alone, constituted an extraordinary circumstance to grant intervention now. Spark explained that what had changed was the posture of the proceeding: the RD recommended approval of the initially proposed supplier tariff revisions notwithstanding the significant supplier opposition reflected in the evidentiary record.

Under those circumstances, Spark concluded that the prudent course was to present its legal objections during the exceptions phase before the Commission entered a final order. Answers to Spark's Petition and Motion were due September 21, 2026 per 52 Pa. Code § 5.61(a).

3. The next day, September 1, 2026, CAUSE-PA filed Preliminary Objections ("POs") seeking: (1) dismissal of Spark's Petition to Intervene; (2) striking Spark's Exceptions. In support, CAUSE-PA characterized Spark's acknowledgment that its decision not to intervene earlier "was a judgment" as an admission that Spark had "actively weighed the risks of litigation and chose not to participate." CAUSE-PA sought expedited action before the September 8, 2026 deadline for Reply Exceptions suggesting oral argument be held to assist in the rendering of a decision before then. Although CAUSE-PA requested expedited relief, its filing also included the standard Notice to Plead advising that Spark's answer to the Preliminary Objections was due within ten days of service pursuant to the Commission's regulations and noting only that the response period **might** be affected if expedited relief were granted by the Commission. Alternatively, CAUSE-PA requested amendment of the procedural schedule to permit reply exceptions to Spark's Exceptions after disposition of the intervention request. Spark's Answer to the POs was due September 11, 2026 pursuant to 52 Pa. Code §§ 5.61(a)(2) and 5.101(f)(1)'

4. Spark quickly responded to the POs by letter the next day, on September 2, 2026, advising the Commission that it would voluntarily accelerate the filing of its Answer by seven days and requesting only that the Commission defer ruling until it had the benefit of that formal Answer. Spark explained that it sought no reopening of the evidentiary record, no additional evidence, no delay in the Commission's review of the RD, and identified procedural alternatives that would preserve both the existing schedule and the procedural rights of all parties. Consistent

with its representations in the letter, Spark filed its Answer on September 4, 2026 (seven days before the September 11, 2026 answer deadline).

5. Although CAUSE-PA requested expedited relief, no Commission action modified the response periods established by the Commission's regulations. Thus, as of September 4, 2026, the September 21, 2026 deadline for responses to Spark's Petition and Motion and the September 11, 2026 deadline for Spark's Answer to CAUSE-PA's Preliminary Objections remained in effect.

6. On September 4, 2026, the Secretarial Letter was issued denying Spark's Petition to Intervene, striking Spark's timely-filed Exceptions, and dismissing CAUSE-PA's POs as moot. The Secretarial Letter concluded that Spark had not established the extraordinary circumstances necessary to grant post-hearing intervention. Beyond observing that the Petition was filed after the evidentiary hearing had concluded, the Secretarial Letter does not discuss the specific circumstances Spark identified in support of its request for party status. While the Secretarial Letter discussed Spark's alternative request that the Commission accept and consider its Exceptions as a non-party, the Secretarial Letter resolved that request through its interpretation of *Blue Pilot* and did not separately address the broader procedural discretion Spark requested the Commission exercise. The Secretarial Letter did not discuss Spark's September 2, 2026 letter in response to the POs. Spark's September 4, 2026 Answer—which formally responded to CAUSE-PA's POs, including the mischaracterization of Spark's decision not to intervene earlier—was also not included as part of the discussion of the Secretarial Letter.

7. This Petition seeks reconsideration of the Secretarial Letter and requests that the Commission vacate the decision striking Spark's timely-filed Exceptions and exercise its

procedural discretion to consider those record-based legal Exceptions in connection with its review of the RD, regardless of whether it ultimately grants Spark's Petition to Intervene.

II. APPLICATION OF THE *DUICK* STANDARD WARRANTS RECONSIDERATION OF THE SECRETARIAL LETTER AND CONSIDERATION OF SPARK'S TIMELY-FILED EXCEPTIONS

8. The Public Utility Code establishes a party's right to seek relief following the issuance of a decision.⁵ Such requests for relief must be consistent with Section 5.572 of the Commission's regulations and/or Section 703(g) of the Public Utility Code.⁶

9. Pursuant to Commission precedent as set forth in *Duick*,⁷ the Commission engages in a two-step inquiry related to requests for reconsideration. The first step is to determine whether a petition presents a sufficient basis upon which the Commission should exercise its discretion to reconsider a prior action, including whether the petition presents new or novel arguments or identifies considerations that appear to have been overlooked or not addressed in the prior decision.⁸ **Section A** explains why the Secretarial Letter should be reconsidered by identifying two independent grounds satisfying the first step of the *Duick* inquiry. Stated simply, the first step asks whether the Commission should reconsider the Secretarial Letter.

10. If the Commission determines that reconsideration is warranted, the second step of the *Duick* analysis is to determine whether the prior action should be modified or rescinded.

⁵ 66 Pa. C.S. § 703(f) relating to rehearings, and § 703(g) relating to the rescission, clarification and amendment of orders.

⁶ 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

⁷ *Duick v. Pennsylvania Gas and Water Company*, Docket Nos. C-R0597001 et al., 56 Pa. P.U.C. 553, 558-59 (1982), *1982 Pa. PUC LEXIS 4, at 11-13

⁸ *See, e.g., David Bornside v. The Pittsburgh Water and Sewer Authority*, Docket No. C-2023-3044525, Opinion and Order entered June 5, 2025, at 8-9.

Section B explains why the Commission should modify the Secretarial Letter by vacating its decision to strike Spark's timely-filed Exceptions and exercising its procedural discretion to consider those record-based legal Exceptions before determining whether FirstEnergy's original challenged supplier tariff revisions should become final tariff provisions, even if the Commission continues to deny Spark's Petition to Intervene. In other words, the second step asks what action the Commission should take upon reconsideration.

A. Step One of *Duick* – Bases Upon Which Commission Should Reconsider

1. Overlooked Material Procedural Consideration

11. Reconsideration is warranted because the Secretarial Letter overlooked a material procedural consideration bearing directly upon the appropriate disposition of Spark's Motion for Leave to Accept Exceptions. Under *Duick*, reconsideration is appropriate where the Commission appears to have overlooked or not addressed a material consideration presented in the record.

12. Here, CAUSE-PA did not merely oppose Spark's Petition to Intervene. It affirmatively requested the extraordinary procedural remedy of striking Spark's timely-filed Exceptions and sought expedited disposition of that request before the September 8, 2026 deadline for Reply Exceptions. CAUSE-PA's request for expedited disposition did not modify the response period established by the Commission's regulations or by CAUSE-PA's own Notice to Plead. Nevertheless, Spark responded the very next day, advising the Commission that it would voluntarily accelerate the filing of its Answer by six days.⁹

13. Commission precedent recognizes that one party's request for expedited treatment does not itself alter the response periods established by the Commission's regulations. In *Pike County Light & Power*, the Commission held that ruling before expiration of the prescribed

⁹ See Spark Sept. 2, 2026 Letter at 1-2

response period was "procedurally deficient" and explained that parties remain entitled to rely upon the response periods established by the Commission's regulations unless and until the Commission expressly grants a waiver and communicates that decision.¹⁰ Indeed, the Commission emphasized that "[p]arties may not modify the regulatory response times prescribed by our Regulations, absent express approval of a requested waiver."¹¹ The Commission thus recognized that the decision whether to depart from a prescribed response period belongs to the Commission—not to the requesting party—and requires an express exercise of the Commission's procedural authority.¹² Likewise, Commission precedent reflects that where the Commission elects to depart from the ordinary procedural sequence and act before expiration of an answer period, it has expressly explained why immediate action was appropriate.¹³

14. Neither occurred here. CAUSE-PA's request for expedited disposition did not—and under *Pike County Light & Power* could not by itself—modify Spark's ten-day answer period established by the Commission's regulations or by CAUSE-PA's own Notice to Plead. Likewise, unlike the Commission's approach in *Aqua Pennsylvania Wastewater*, the Secretarial Letter contains no indication that the Commission expressly shortened Spark's answer period, granted CAUSE-PA's request for expedited treatment, or otherwise determined that immediate

¹⁰ *Pennsylvania Public Utility Commission v. Pike County Light & Power Company (Gas); Pennsylvania Public Utility Commission v. Pike County Light & Power Company (Electric)*, Docket Nos. R-2024-3052357 and R-2024-3052359, Opinion and Order entered May 9, 2025, *2025 WL 1423706, at 15 (Pa. P.U.C.).

¹¹ *Pike County Light & Power*, *2025 WL 1423706, at 15.

¹² *See Pike County Light & Power*, *2025 WL 1423706, at 15.

¹³ *Application of Aqua Pennsylvania Wastewater, Inc., pursuant to Sections 507, 1103, and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the Delaware County Regional Water Quality Control Authority*, Docket No. A-2019-3015173, Opinion and Order entered Aug. 31, 2020, **2020 WL 5593197, at *3 n.3, 3-4 (Pa. P.U.C.) (explaining why action before expiration of the answer period was appropriate).

action before Spark's promised Answer was necessary. The contrast is particularly significant because, where the Commission has exercised its discretion to permit post-hearing intervention, it has explained why the circumstances justified that result.¹⁴

15. Also significant is the procedural timing reflected in the docket. Spark filed its Petition and Motion on August 31, 2026. Under the Commission's regulations, responses to that filing were not due until September 21, 2026. After CAUSE-PA filed Preliminary Objections on September 1, 2026, Spark's Answer likewise was not due until September 11, 2026, and Spark advised the Commission that it would voluntarily accelerate that filing by six days. Nevertheless, on September 4, 2026, before either response period had expired and before Spark's promised Answer could be considered, the Secretary denied intervention, struck Spark's Exceptions, and dismissed the Preliminary Objections as moot. Thus, when the Secretarial Letter was issued, the ordinary response process contemplated by the Commission's own procedural rules had not yet run its course for either Spark's Petition and Motion or CAUSE-PA's POs.

16. The Secretarial Letter also does not address the procedural alternatives presented by either Spark or CAUSE-PA. From the outset, Spark consistently explained that it sought no reopening of the record, no additional evidence, no additional testimony, no additional hearings, and no delay, and proposed procedural alternatives that would preserve both the existing schedule and the procedural rights of all participants.¹⁵ CAUSE-PA likewise acknowledged that, if the Commission declined immediately to strike Spark's Exceptions, the procedural schedule

¹⁴ *Corinna Lynn Scheffer v. Columbia Gas of Pennsylvania, Inc.*, Docket No. C-2010-2153353, Opinion and Order entered Nov. 1, 2011, at 13-15 (analyzing the petitioners' asserted extraordinary circumstances and explaining why those circumstances justified post-hearing intervention).

¹⁵ *See* Spark Sept. 2, 2026 Letter at 2.

could instead be amended to permit responses after disposition of the intervention request.¹⁶

Thus, both Spark and CAUSE-PA identified procedural alternatives to immediately striking Spark's timely-filed Exceptions. Nevertheless, having elected to rule before expiration of Spark's ordinary answer period—without explaining why immediate action was necessary—the Commission adopted the most restrictive procedural remedy requested by CAUSE-PA and struck Spark's Exceptions.

17. The overlooked procedural consideration therefore extends beyond the fact that Spark's Answer ultimately was not considered. It also encompasses the Commission's decision to strike Spark's Exceptions before considering the filings Spark submitted in response to CAUSE-PA's request for that extraordinary relief.¹⁷ One day after CAUSE-PA sought expedited relief, Spark advised the Commission that it would voluntarily accelerate its Answer by six days and requested only that the Commission defer ruling until it had considered that Answer.¹⁸ As promised, Spark filed its Answer two days later, explaining why striking the Exceptions was unnecessary and proposing narrower procedural alternatives that would have preserved the existing schedule while protecting the procedural rights of all participants.¹⁹ The Secretarial Letter does not address Spark's request to defer ruling, Spark's early-filed Answer, or the procedural alternatives presented by either Spark or CAUSE-PA before striking Spark's timely-filed Exceptions. Nor does it address Spark's explanation that prompt consideration remained

¹⁶ CAUSE-PA POs at 2 (“Alternatively, CAUSE-PA requests that the Commission amend the procedural schedule to provide the parties an appropriate time to respond to Spark’s . . . Exceptions, if warranted, *after* a decision is made regarding Spark’s . . . request to intervene.”)(emphasis original).

¹⁷ See Spark Sept. 2, 2026 Letter at 1-2; Spark Answer Paragraphs 32-35.

¹⁸ See Spark Sept. 2, 2026 Letter at 2.

¹⁹ See Spark Answer Paragraphs 3-10, 23-35

entirely appropriate given Spark's voluntary offer to file its formal Answer early, or Spark's agreement that a modest extension of Reply Exceptions could be granted if the Commission concluded additional response time was appropriate.²⁰

18. Those omitted procedural analyses are precisely the type of overlooked considerations that *Duick* recognizes as warranting reconsideration.

2. Error of Law

19. The second independent basis upon which the Commission should reconsider the Secretarial Letter is that it rests upon an erroneous legal premise. Specifically, the Secretarial Letter treated denial of Spark's Petition to Intervene as necessarily requiring denial of Spark's separately requested Motion for Leave to Accept Exceptions and the striking of Spark's timely-filed Exceptions, without separately considering that alternative request for procedural relief.

20. Spark's Petition and Motion expressly presented the Commission with two distinct procedural requests.²¹ First, Spark requested limited intervention pursuant to 52 Pa. Code § 5.74(c). Alternatively, if the Commission concluded that intervention should be denied, Spark separately requested that the Commission exercise its procedural discretion to permit consideration of Spark's timely-filed, record-based legal Exceptions in connection with its review of the RD.²² Spark consistently maintained that, even if intervention were denied, the Commission retained procedural authority to accept and consider Spark's timely-filed, record-based legal Exceptions.²³

²⁰ See Spark Sept. 2, 2026 Letter at 2; Spark Answer Paragraphs 33-35.

²¹ Spark Petition at Paragraphs 1 and 8.

²² Spark Petition at Paragraph 18.

²³ See Spark Petition Paragraph 18; Spark Answer Paragraphs 3, 6-10

21. The Secretarial Letter concluded that Spark failed to establish the extraordinary circumstances necessary for post-hearing intervention. Beyond noting that the Petition was filed after the evidentiary hearing had concluded, however, the Secretarial Letter does not discuss Spark's explanation that the relevant change in circumstances occurred upon issuance of the RD, rather than during the evidentiary phase of the proceeding.

22. The Secretarial Letter also rejected Spark's alternative request that the Commission accept and consider its Exceptions by concluding that *Blue Pilot* did not support Spark's reading of that decision and that, because intervention was denied, Spark's Exceptions must be stricken as filings by a non-party. The Secretarial Letter did not separately analyze whether, independent of its reading of *Blue Pilot*, the Commission should exercise its procedural discretion to grant the alternative relief Spark requested under its regulations and prior Commission precedent.²⁴ Spark's Petition explained that the RD recommended approval of the Settlement without modification and that Spark sought only to present legal objections to that recommendation on the existing evidentiary record during the exceptions phase.²⁵

23. Commission precedent recognizes that petitions to intervene and requests for alternative procedural relief invoke distinct sources of the Commission's procedural authority. In *Verizon Pennsylvania*, after denying a petition to intervene, the Commission separately considered whether it would entertain the proposed intervenor's amicus exceptions.²⁶ Likewise,

²⁴ Secretarial Letter at 4.

²⁵ Spark Petition at Paragraphs 14-17.

²⁶ *Verizon Pennsylvania Inc., Verizon North Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Select Services, Inc., Verizon Global Networks, Inc., MCI Metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc. v. Penn Telecom, Inc.*, Docket No. C-20066987, Opinion and Order entered Aug. 29, 2008, **2008 WL 8014595, at 4-5 (Pa. P.U.C.) (denying petition to

in *West Penn Power*, the Commission separately addressed Community Energy, Inc.'s Petition to Intervene and its alternative request for waiver permitting the filing of non-party Exceptions.²⁷ Similarly, in *CenturyLink*, the Commission separately considered the Pennsylvania Telephone Association's Petition to Intervene and its alternative Motion for Leave to Accept Exceptions.²⁸ Although the Commission ultimately denied the requested alternative relief in each instance, those decisions demonstrate that denial of intervention does not itself resolve a separately presented request for more limited procedural relief. Rather, each request calls for a separate exercise of Commission discretion.

24. The Secretarial Letter's rejection of Spark's alternative Motion rests entirely on its reading of *Blue Pilot*. The Secretarial Letter correctly observes that the Commission ultimately resolved the underlying legal issue in *Blue Pilot* through Blue Pilot's Exception rather than RESA's proposed Exception. The Secretarial Letter does not, however, address the broader procedural course followed in *Blue Pilot* before the Commission reached that result. There, RESA filed a Petition to Intervene and, in the alternative, a Motion for Leave to Accept

intervene, then separately considering whether to entertain proposed intervenor's amicus exceptions).

²⁷ *Pennsylvania Public Utility Commission v. West Penn Power Company d/b/a Allegheny Energy*, Docket Nos. P-00072349, R-00072753, and R-00072754, Opinion and Order entered Aug. 14, 2008, 103 Pa. P.U.C. 354, section entitled "CEI Petition to Intervene", 2008 WL 4614215 (Pa. P.U.C.) (separately addressing petition to intervene and alternative request for waiver permitting non-party exceptions).

²⁸ *The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink 2018 Annual Price Stability Index/Service Price Index Report Filing; Office of Consumer Advocate v. The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink; The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink 2019 Annual Price Stability Index/Service Price Index Report Filing; Office of Consumer Advocate v. The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink*, Docket Nos. R-2018-3004019, P-00981410F1000, C-2018-3005400, R-2019-3012238, and C-2019-3012876, Opinion and Order entered Jan. 13, 2022, **2022 WL 143148, at 26-27 (Pa. P.U.C.) (separately denying petition to intervene and alternative motion for leave to accept exceptions).

Exception. OAG/OCA filed an Answer opposing both requests. The Commission summarized RESA's procedural requests, summarized OAG/OCA's Answer, denied intervention, and only then exercised its procedural discretion after considering the competing procedural positions presented by RESA and OAG/OCA.²⁹ Because *Blue Pilot's* Exception independently raised the same legal issue as RESA, the Commission had no need to decide whether RESA's proposed Exception should separately be accepted or considered. Accordingly, *Blue Pilot* did not decide the question presented here—whether denial of intervention necessarily requires contemporaneously filed non-party Exceptions to be stricken.

25. The Commission's regulations likewise recognize that its procedural authority extends beyond a binary decision to grant or deny intervention. Section 1.2 authorizes the Commission to liberally construe its procedural rules, disregard procedural defects that do not affect substantive rights, and waive procedural requirements where appropriate. Likewise, Section 5.75 expressly provides that the Commission may grant intervention "in whole or in part" or authorize "limited participation." Together, these regulations recognize multiple procedural avenues through which it could have exercised its discretion with respect to Spark's alternative request for relief.

26. Spark does not contend that *Blue Pilot* required the Commission to accept Spark's Exceptions. Rather, together with *Verizon*, *West Penn Power*, and *CenturyLink*, *Blue Pilot* demonstrates that denial of intervention does not itself end the Commission's procedural analysis. Instead, the Commission has consistently recognized that intervention and alternative procedural relief present distinct procedural questions requiring separate exercises of procedural

²⁹ *Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655, Opinion and Order entered June 14, 2018, at 78-81.

discretion. *Blue Pilot* is consistent with that line of authority because, after considering RESA's Petition, alternative Motion, and OAG/OCA's Answer, the Commission exercised its procedural discretion without concluding that denial of intervention itself required striking RESA's contemporaneously filed proposed Exception. By resolving Spark's alternative Motion solely through its reading of *Blue Pilot*, the Secretarial Letter never separately exercised the broader procedural discretion Spark invoked under the Commission's regulations and the Commission's own precedent. It is that omitted procedural analysis—not the ultimate exercise of the Commission's discretion—that constitutes the legal error warranting reconsideration. Nor did the Secretarial Letter explain why the Commission departed from the procedural course reflected in *Blue Pilot*, where the Commission considered the parties' competing procedural positions before exercising its discretion.

B. Step Two of *Duick* – Upon Reconsideration, the Commission Should Exercise Its Procedural Discretion to Permit Consideration of Spark's Timely-Filed Exceptions

27. Upon reconsideration, the Commission should exercise its procedural discretion to permit consideration of Spark's timely-filed Exceptions even if it continues to deny Spark's Petition to Intervene. The Commission's discretion in this regard is broad, but it must be exercised reasonably.³⁰ Spark seeks no reopening of the evidentiary record, no additional testimony, no discovery, no additional briefing, and no delay in the Commission's consideration of the RD. Rather, Spark requests only that the Commission consider its timely-filed, record-based legal Exceptions before determining whether FirstEnergy's proposed tariff revisions should become final Commission-approved tariff provisions.

³⁰ *Scheffer* at 14.

28. Granting Spark's reconsideration should not be viewed as establishing a general rule permitting non-parties to await a recommended decision before filing Exceptions. The Commission has recognized that its discretion in ruling on petitions to intervene is broad, but that it "must exercise that discretion reasonably."³¹ In *Scheffer*, the Commission exercised that discretion only after carefully considering the particular circumstances presented, including the petitioners' explanation for their late intervention, the absence of prejudice to the existing parties, the fact that the petitioners accepted the record as it stood, and the assistance their participation would provide to the Commission's review.³² The same considerations support the limited relief requested here. Spark seeks no reopening of the evidentiary record, no additional testimony, no discovery, and no delay. Throughout the evidentiary phase of this proceeding, RESA and multiple supplier parties developed the factual record regarding the supplier objections through witness testimony, discovery, and cross-examination. Spark did not separately intervene because it did not seek to present additional factual evidence beyond that already being developed by those parties. Accordingly, Spark does not now seek to supplement the evidentiary record or advance new factual contentions. It seeks only to present legal objections based upon the existing record. Choosing not to duplicate the development of the factual record, however, is not the same as accepting in advance whatever legal conclusions the Commission ultimately draws from that record.

29. That decision was entirely consistent with the procedural history later examined in *Respond Power*. There, Respond Power—also a RESA member—elected not to intervene separately in the DSP IV proceeding while RESA and other electric generation suppliers

³¹ *Scheffer*, Docket No. C-2010-2153353, Opinion and Order entered Nov. 1, 2011, at 14.

³² *Scheffer*, at 11-15.

developed the factual record concerning the proposed tariff revisions and ultimately negotiated modifications to those proposals through settlement. The Commission and the Commonwealth Court later relied upon that procedural history in concluding that Respond Power had notice and an adequate opportunity to challenge the proposed tariff revisions before they became final and therefore could not later collaterally attack those tariff provisions through a subsequent complaint.³³

30. Spark reasonably relied upon RESA's participation during the evidentiary phase of this proceeding rather than duplicating the development of the factual record. That judgment proved reasonable throughout the evidentiary phase. The procedural posture changed only upon issuance of the RD. Despite the extensive supplier participation throughout the evidentiary proceeding, the non-unanimous settlement retained FirstEnergy's original challenged supplier proposals without modification, and the RD recommended approval of those same provisions as originally proposed. Under those circumstances, and considering *Respond Power*, Spark reasonably determined that remaining silent until after entry of a final order risked a later determination that, like Respond Power, Spark had forfeited the opportunity to raise its legal objections before the tariff became final. Unlike Respond Power, though, Spark did not wait until the Commission-approved tariff was later applied to it before acting. Instead, Spark presented its legal objections during the only remaining procedural stage before entry of the Commission's final order. That decision was not strategic delay or an attempt to circumvent the intervention rules. It was a reasonable response to the procedural posture created by the RD.³⁴

³³ *Respond Power*, slip op. at 5-7, 17.

³⁴ Spark Answer Paragraphs 15-19.

31. Spark also respectfully submits that the Commission has never considered Spark's Answer to CAUSE-PA's request that Spark's timely-filed Exceptions be stricken. From the outset, Spark's alternative Motion sought only consideration of its contemporaneously filed, record-based legal Exceptions and expressly represented that no reopening of the evidentiary record, additional discovery, additional hearings, or alteration of the Commission's schedule would be required.³⁵ CAUSE-PA's POs did not merely oppose intervention. They sought the additional and extraordinary procedural remedy of striking Spark's timely-filed Exceptions before Spark had an opportunity to respond. Spark's September 2, 2026 letter and September 4, 2026 Answer did not alter the relief requested in the Petition; they responded to the new procedural issue created by CAUSE-PA's request to strike Spark's timely-filed Exceptions. Spark explained why striking the Exceptions was unnecessary, why narrower procedural alternatives were available, and why the Commission should nevertheless exercise the same procedural discretion Spark had requested from the outset.³⁶ Because the Secretarial Letter issued before those filings could be considered and thereafter dismissed CAUSE-PA's POs as moot, the Commission has never considered Spark's response to CAUSE-PA's request to strike the Exceptions.³⁷

32. The present proceeding also illustrates that the Commission was not limited to a binary choice between granting intervention and immediately striking Spark's contemporaneously filed Exceptions. Infinity Capital, although not a party, filed Exceptions raising specific objections to the RD.³⁸ Although FirstEnergy argues that Infinity's Exceptions

³⁵ See Spark Petition Paragraphs 4, 16-18.

³⁶ See Spark Sept. 2 Letter at 1-2; Spark Answer Paragraphs 6-10, 23-29, 33-35.

³⁷ See Spark Answer Paragraphs 13-19 and 23-35.

³⁸ Exceptions of Infinity Capital, LLC dated August 25, 2026 at 1-2.

should be disregarded because Infinity is not a party, it nevertheless responds to the specific issues Infinity raises.³⁹ Spark, by contrast, affirmatively sought the Commission's procedural guidance through its Petition to Intervene and alternative Motion for Leave to Accept Exceptions. CAUSE-PA nevertheless requested the additional and extraordinary remedy of striking Spark's Exceptions before Spark could respond, and the Secretarial Letter granting that relief was issued before the lapse of Spark's timeframe to formally answer. Even CAUSE-PA acknowledged that another procedural course remained available—amending the schedule to permit responses after disposition of the intervention request. Under these unique circumstances, the Commission may now exercise its procedural discretion by considering Spark's timely-filed, record-based legal Exceptions while continuing to deny formal intervention.

33. Under these unique circumstances, permitting consideration of Spark's timely-filed Exceptions best serves the Commission's review of the RD. Doing so neither reopens the evidentiary record, requires additional discovery or testimony, alters the Commission's schedule, nor delays entry of a final order—precisely the limited relief Spark has requested since filing its original Petition.⁴⁰ It simply permits the Commission to consider timely-presented legal objections before determining whether FirstEnergy's original challenged supplier tariff revisions should become final Commission-approved tariff provisions that will then apply to Spark's operations.

III. CONCLUSION

34. For the reasons set forth above, this Petition satisfies both steps of the Commission's reconsideration standard under *Duick*. The Secretarial Letter rests upon an

³⁹ FirstEnergy Reply Exceptions at 2-3 and 8-10.

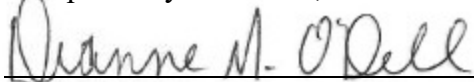
⁴⁰ See Spark Petition Paragraphs 4, 16-18; Spark Sept. 2 Letter at 2; Spark Answer Paragraphs 19, 24, 33-35.

erroneous legal premise and overlooked material procedural considerations presented to the Commission before issuance of the Secretarial Letter. Upon reconsideration, the Commission should exercise its procedural discretion to permit consideration of Spark's timely-filed, record-based legal Exceptions in connection with its review of the RD. Doing so would require no reopening of the evidentiary record, no additional discovery, no testimony, no additional briefing, no delay in the Commission's consideration of the RD, and no modification of the existing evidentiary record. It simply permits the Commission to consider Spark's timely-presented legal objections before determining whether FirstEnergy's original challenged tariff provisions should become final Commission-approved tariff provisions.

WHEREFORE, Spark Energy, LLC respectfully requests that the Commission:

- (a) Grant this Petition for Reconsideration;
- (b) Vacate the September 4, 2026 Secretarial Letter to the extent it struck Spark's timely-filed Exceptions;
- (c) In its discretion, grant limited intervention to Spark;
- (d) In either event, grant Spark's Motion for Leave to Accept Exceptions and consider Spark's timely-filed, record-based legal Exceptions in connection with the Commission's review of the Recommended Decision;
- (e) Consider Spark's Exceptions together with the Exceptions and Reply Exceptions already filed by the parties before determining whether to adopt the Recommended Decision and the challenged tariff revisions as final Commission-approved tariff provisions; and
- (f) Grant such other and further relief as the Commission deems just and proper.

Respectfully submitted,



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VERIFICATION

I, Barbara Clay, hereby state that I am an attorney for Spark Energy, LLC, the facts set forth in Spark's Petition for Reconsideration are true and correct (or are true and correct to the best of my knowledge, information and belief), and 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).

Dated: September 11, 2026

Barbara Clay

Barbara Clay
Legal
Spark Energy, LLC