



September 21, 2026

Via E-File

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

Secretary Homsher:

Attached, please find the **Answer to the Petition for Reconsideration of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** in the above noted proceeding.

As indicated on the attached Certificate of Service, service on the parties was accomplished by email only.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Elizabeth R. Marx".

Elizabeth R. Marx, Esq.
Counsel for CAUSE-PA

CC: *Office of Special Assistants (OSA) (via email ra-OSA@pa.gov)
Certificate of Service*

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 :

Certificate of Service

I hereby certify that I have this day served copies of the **Answer to the Petition for Reconsideration of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54.

VIA EMAIL ONLY

The Honorable Mark A. Hoyer
Deputy Chief Administrative Law Judge
Pennsylvania Public Utility Commission
Piatt Place, Suite 220
201 Fifth Avenue
Pittsburgh, PA 15222
mhoyer@pa.gov

The Honorable Erin L. Gannon
Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
egannon@pa.gov

Kenneth M. Kulak, Esq.
Brooke E. McGlinn, Esq.
Maggie E. Curran, Esq.
Morgan, Lewis & Bockius LLP
2222 Market Street
Philadelphia, PA 19103-2921
ken.kulak@morganlewis.com
bmcglinn@morganlewis.com
maggie.curran@morganlewis.com

Tori L. Giesler, Esq.
Angelina Umstead, Esq.
FirstEnergy Service Company
2800 Pottsville Pike
Reading, PA 19612-6001
tgiesler@firstenergycorp.com
aumstead@firstenergycorp.com

Harrison W. Breitman, Esq.
Olivia M. Spergel, Esq.
Katherine M. Kennedy, Esq.
Office of Consumer Advocate
5th Floor Forum Place
555 Walnut Street
Harrisburg PA 17101-1923
HBreitman@paoca.org
OSpergel@paoca.org
KKennedy@paoca.org
OCAFEDSP26@paoca.org

Susan E. Bruce, Esq.
Charis Mincavage, Esq.
Matthew Garber, Esq.
Rebecca Kimmel, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108
sbruce@mcneeslaw.com
cmincavage@mcneeslaw.com
mgarber@mcneeslaw.com
rkimmel@mcneeslaw.com

Rebecca Lyttle, Esq.
Office of Small Business Advocate
Forum Place – First Floor
555 Walnut Street
Harrisburg, PA 17101
relyttle@pa.gov

Colleen Kartychak, Esq.
Marsha D. Makel, Esq.
Constellation
1310 Point Street, 8th Floor
Baltimore, MD 21231
colleen.kartychak@constellation.com
marsha.makel@constellation.com

Linda S. Kizuka, Esq.
Constellation
250 Massachusetts Ave., N.W., Suite 760
Washington, D.C. 20001
Linda.Kizuka@constellation.com

Michael A. Gruin, Esq.
Donald Wagner, Esq.
Stevens & Lee, PC
17 North 2nd Street, 16th Floor
Harrisburg, PA 17101
michael.gruin@stevenslee.com
donald.wagner@stevenslee.com

Lauren M. Burge, Esq.
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
lburge@eckertseamans.com

Karen Kemerait, Esq.
Fox Rothschild LLP
301 Hillsborough Street, Suite 1120
Raleigh, NC 27603
kkemerait@foxrothschild.com

Aron J. Beatty, Esq.
Duquesne Light Co.
800 N. Third St.
Harrisburg, PA 17402
abeatty@duqlight.com

Todd S. Stewart, Esq.
HMS Legal LLP
501 Corporate Circle, Suite 302
Harrisburg, PA 17110
tsstewart@hmslegal.com

Melissa A Chapaska, Esq.
HMS Legal LLP
501 Corporate Circle, Suite 302
Harrisburg, PA 17110
machapaska@hmslegal.com

Whitney E. Snyder, Esq.
HMS Legal LLP
501 Corporate Circle, Suite 302
Harrisburg, PA 17110
wesnyder@hmslegal.com

Daniel Markind, Esq.
Flaster Greenberg, PC
1717 Arch Street, Suite 3300
Philadelphia, PA 19103
daniel.markind@flastergreenberg.com

Deanne M. O'Dell, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
P.O. Box 1248
Harrisburg, PA 17101
dodell@eckertseamans.com

Taylor Speer, Esq.
Fox Rothschild LLP
2 West Washington Street
Suite 1100
Greenville SC 29601
tspeer@foxrothschild.com

Samuel W. Cortes, Esq.
Ashley L. Beach, Esq.
Fox Rothschild LLP
747 Constitution Drive, Suite 100
Exton, PA 19341
scortes@foxrothschild.com
abeach@foxrothschild.com

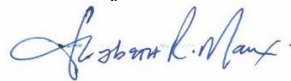
Barry A. Naum, Esq.
Steven W. Lee, Esq.
Spilman Thomas & Battle, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
bnaum@spilmanlaw.com
slee@spilmanlaw.com

Jamie L. Martines, Esq.
Spilman Thomas & Battle, PLLC
301 Grant Street, Suite 3440
Pittsburgh, PA 15219
jmartines@spilmanlaw.com

Mitchell H. Kizner, Esq.
Flaster Greenberg, PC
Commerce Center
1810 Chapel Avenue W
Cherry Hill, NJ 08002
mitchell.kizner@flastergreenberg.com

Nicholas A. Stobbe, Esq.
Stevens & Lee
17 North 2nd Street, 16th Floor
Harrisburg, PA 17101
nicholas.stobbe@stevenslee.com

Respectfully Submitted,
PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA



Elizabeth R. Marx, Esq.
118 Locust Street
Harrisburg, PA 17101
717-710-3825
pulp@pautilitylawproject.org

Date: September 21, 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 :

**ANSWER OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND
ENERGY EFFICIENCY IN PENNSYLVANIA IN OPPOSITION
TO THE PETITION FOR RECONSIDERATION OF SPARK ENERGY, LLC**

Counsel for CAUSE-PA

Elizabeth R. Marx, Esq., PA ID: 309014
Ria M. Pereira, Esq., PA ID: 316771
Lauren N. Berman, Esq., PA ID: 310116
John W. Sweet, Esq., PA ID: 320182
Levi A. Phillips, Esq., PA ID: 338477

Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
717-710-3825
pulp@pautilitylawproject.org

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	STANDARD FOR RECONSIDERATION	4
IV.	SPARK’S REQUEST FOR RECONSIDERATION FAILS TO MEET THE STANDARD OF REVIEW AND MUST BE DENIED	6
	a. Spark has not identified any overlooked procedural consideration sufficient to warrant reconsideration.	8
	b. It would be an error of law for the Commission to consider Spark’s Exceptions, as doing so would negatively impact the rights of CAUSE-PA and other parties to the proceeding.	10
	c. Spark’s reliance on <i>Respond Power</i> is misplaced and does not constitute an extraordinary circumstance to warrant post-hearing intervention.....	12
	d. Infinity Capital’s legally deficient Exceptions do not provide a basis for reconsideration of the Commission’s decision to strike Spark’s Exceptions.	14
V.	CONCLUSION.....	15

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, submits this Answer in opposition to the Petition for Reconsideration of Spark Energy, LLC (Spark).¹

As explained herein, Spark's Petition fails to meet the standard for reconsideration. As such, the Commission must uphold its decision to deny Spark's untimely intervention and strike Spark's legally deficient Exceptions. CAUSE-PA urges the Commission to make its determination on an expedited basis, thereby protecting the due process rights and the limited resources of the parties.

I. BACKGROUND

On August 31, 2026, more than five months after the deadline for intervention and more than two months after the evidentiary hearing in this matter concluded, Spark simultaneously filed a Petition to Intervene and Exceptions to the Recommended Decision of Deputy Chief Administrative Law Judge (DCALJ) Mark A. Hoyer and Administrative Law Judge (ALJ) Erin L. Gannon.²

On September 1, 2026, CAUSE-PA filed Preliminary Objections and Request for Expedited Relief objecting to Spark's late intervention and legally deficient Exceptions and seeking expedited relief striking Spark's Exceptions from the record in advance of the deadline for Reply Exceptions.³ CAUSE-PA argued that, as a non-party, Spark lacked the procedural right to file Exceptions, and that Spark failed to prove the existence of any extraordinary circumstances necessary to permit intervention after conclusion of the

¹ 52 Pa. Code §§ 5.61(e), 5.572(e).

² See Spark Pet. to Intervene & Spark Exceptions.

³ CAUSE-PA PO at 2-3.

evidentiary hearing.⁴ Spark's 11th hour filings contain facts outside the record and, if entertained, would violate CAUSE-PA's due process rights.⁵ CAUSE-PA requested expedited relief to protect itself and other duly admitted parties from expending substantial resources to respond to Spark's improperly filed Exceptions within the compressed 7-day timeframe for Exceptions, which coincided with the Labor Day holiday.⁶

On September 3, 2026, Spark filed a Letter objecting to CAUSE-PA's request for expedited relief and arguing that Spark should be afforded the opportunity to respond to CAUSE-PA's Preliminary Objections before the Commission rules on the matter.⁷

On September 4, 2026, the Commission issued a Secretarial Letter denying Spark's Petition to Intervene, striking Spark's improperly filed Exceptions, and denying CAUSE-PA's preliminary objections as moot. In its Secretarial Letter, the Commission correctly determined that Spark failed to demonstrate the "extraordinary circumstances" required for post-hearing intervention under 52 Pa. Code § 5.72(c) and properly struck Spark's Exceptions from the record.⁸

On September 11, 2026, Spark filed its Petition for Reconsideration, arguing that the circumstances in this case are "highly unusual" and warrant late intervention or, alternatively, support consideration of its Exceptions as a non-party.⁹ Spark acknowledges, yet again, that it had actual knowledge of FirstEnergy's supplier related proposals at the time those proposals were filed, but made an intentional "judgement" not

⁴ CAUSE-PA PO at 3-5.

⁵ CAUSE-PA PO at 5-6.

⁶ CAUSE-PA PO at 6.

⁷ Spark Sept. 2 Letter at 2.

⁸ Sept. 4 Sec. Letter at 4.

⁹ Spark Pet. for Recon. at 2, 4-5.

to participate.¹⁰ Spark argues that issuance of the RD on August 21, 2026, was the first time it “reasonably confronted” the possibility that FirstEnergy’s proposals may prevail.¹¹ Thus, despite full knowledge of the actual proposals that became part of the recommended decision, Spark choose to sit on its hands for five months and was surprised that those proposals prevailed. The only highly unusual fact pattern in this proceeding is the path chosen by Spark.

Spark’s Petition for Reconsideration relies on two primary assertions. First, Spark submits that the Commission “overlooked a material procedural consideration,” arguing the Commission should not have ruled on an expedited basis, before the deadline for Spark to file an Answer to CAUSE-PA’s Preliminary Objections and before the deadline for parties to file an Answer to its Petition to Intervene.¹² Spark further asserts that the Commission overlooked procedural alternatives, including CAUSE-PA’s alternative request that if the Commission were inclined to allow Spark’s late intervention, that the Commission amend the procedural schedule to provide an appropriate time to respond.¹³

As its second basis for reconsideration, Spark argues that it was an error of law to conclude that the Commission *must* strike Exceptions of a non-party and asserts that the Commission retains procedural discretion to consider Exceptions of a non-party pursuant to sections 1.2 and 5.75 of the Commission’s procedural rules.¹⁴ As relief, Spark argues that the Commission should exercise this procedural discretion to consider its Exceptions,

¹⁰ Spark Pet. for Recon. at 2.

¹¹ Spark Pet. for Recon. at 2. As explained in CAUSE-PA’s Preliminary Objections, Spark’s surprise that FirstEnergy’s proposals were adopted without modification in the RD is patently unreasonable, as the risk of defeat is perhaps the most typical risk of litigation. CAUSE-PA PO at 4-5.

¹² Spark Pet. for Recon. at 8-10 & paras. 13-15.

¹³ Spark Pet. for Recon. at 10-12.

¹⁴ Spark Pet. for Recon. at 12-16; 52 Pa. Code §§ 1.2, 5.75.

even if it is not admitted as a party.¹⁵ Spark argues that the Commission did not also strike the improperly filed Exceptions of Infinity Capital – also a non-party – and suggests that this is a “unique circumstance” that would warrant discretionary consideration of its Exceptions.¹⁶

As explained herein, The Commission correctly denied Spark’s Petition to Intervene and dismissed Spark’s improperly filed Exceptions, and there are no new, novel, or overlooked circumstances that warrant reconsideration. Despite Spark’s claims to the contrary, its Petition to Intervene and Exceptions contain facts outside the record, and consideration of these filings would be prejudicial to the parties. As such, expedited relief rejecting Spark’s Petition to Intervene and striking its improperly filed Exceptions was necessary and proper to prevent harm to the duly admitted parties to the proceeding and should be upheld.

II. STANDARD FOR RECONSIDERATION

Reconsideration is not intended to provide an unsuccessful litigant with a second opportunity to relitigate issues already decided.¹⁷ As clearly articulated in Duick v. Pennsylvania Gas and Water Co. (*Duick*) a petitioner must demonstrate an error of law, newly discovered evidence, or a material matter that was overlooked and that would alter the outcome of the underlying decision:¹⁸

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince this

¹⁵ Spark Pet. for Recon. at 16-20.

¹⁶ Spark Pet. for Recon. at 19-20, para. 32.

¹⁷ Duick v. Pennsylvania Gas and Water Co., Docket No. C-R0597001 *et al.*, 56 Pa. PUC 553, 559 (1982), quoting Pa. Railroad Co. v. Pa. Public Service Commission, 179 A. 850, 854 (Pa. Super. Ct. 1935).

¹⁸ Id.

Commission that it should exercise its discretion under this code section to rescind or amend a prior order, in whole or in part. In this regard, [the Commission] agree[s] with the Court in the *Pennsylvania Railroad Company* case, wherein it was stated that "[p]arties...cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them...." What [the Commission] expect[s] to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.¹⁹

Pennsylvania's appellate courts have found that reconsideration should be granted judiciously, and only under appropriate circumstances,²⁰ and have consistently held that the Commission is not required to expressly address every contention or argument raised by an interested party.²¹ Even if the Commission does not expressly discuss and dispose of a particular issue raised by a party through the course of a proceeding, the Commission is considered to have implicitly addressed and disposed of the issue without discussion.²² Thus, to meet the *Duick* standard for reconsideration, a party must raise a "new and novel" argument, rather than contend that the Commission failed to address an argument raised by an interested party that was not expressly discussed in a final order.

As explained herein, Spark's Petition for Reconsideration fails to meet this standard. None of the arguments advanced by Spark rise to the level of a "new or novel" argument, and all have been heard before. Granting Spark's request for relief to consider

¹⁹ *Id.* (emphasis added).

²⁰ See *West Penn Power v. Pa. PUC*, 659 A.2d 1055 (Pa. Commw. Ct. 1995), petitions for allowance of appeal denied, 674 A.2d 1079 (Pa. 1996); *City of Pittsburgh v. PennDOT*, 416 A.2d 461 (Pa. 1980).

²¹ See, e.g., PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2017-2019 Submitted in Compliance with 52 Pa Code § 54.74, Order, Docket No. M-2016-2554787, at 9 (order entered April 19, 2018) (hereinafter PPL Electric USECP for 2017-2019), citing Consolidated Rail Corp. v. Pa. PUC, 625 A.2d 741 (Pa. Commw. Ct. 1993); *Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Commw. Ct. 1984).

²² The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. Public Utility Commission*, 625 A.2d 741 (Pa. Commw. 1993).

its Exceptions as a matter of procedural discretion would infringe on the due process rights of CAUSE-PA and the other formal parties to the proceeding. As such, CAUSE-PA asserts that Spark's Petition for Reconsideration must be denied.

III. SPARK'S REQUEST FOR RECONSIDERATION FAILS TO MEET THE STANDARD OF REVIEW AND MUST BE DENIED

The Commission's September 4, 2026, Secretarial Letter properly denied Spark's late-filed Petition to Intervene and, in turn, struck its legally deficient Exceptions from consideration in this proceeding.

In denying Spark's intervention, the Commission correctly concluded that Spark failed to establish the extraordinary circumstances required for post-hearing intervention under section 5.72(c).²³ Spark admits that had actual notice of the proceeding and of FirstEnergy's proposed supplier tariff provisions, yet it knowingly and intentionally chose not to engage in litigation - instead making a "judgement" to rely on its trade association, RESA, and the other supplier parties to litigate the case.²⁴ Spark argues that issuance of the RD "marked the first point at which Spark reasonably confronted the possibility that FirstEnergy's original challenged supplier proposals would be adopted without modification."²⁵ This is an unreasonable position that is not credible. No party – particularly a sophisticated party like Spark who has access to counsel regularly appearing before the Commission – should be surprised that a properly noticed proposal by a utility would be recommended for adoption without modification.

²³ 52 Pa. Code § 5.72(c); Sept. 4 Sec. Letter at 4.

²⁴ Spark Pet. for Recon. at 2, 18.

²⁵ Spark Pet. for Recon. at 2

Spark's dissatisfaction with the RD was not an extraordinary circumstance, it was a reasonably foreseeable outcome of litigation. Indeed, there is always a chance in any adjudicated proceeding that one party will win and the other will lose based on the record developed through the course of litigation. While it is often the case that proposals are modified during litigation, no one should assume that this will occur. If accepted, Spark's contentions in this case would effectively allow any non-party to await issuance of an RD and then seek late-stage intervention and/or participation as a non-party only if dissatisfied with the recommendations contained therein. Such a result would render the Commission's intervention rules meaningless.

Because Spark was not a party to the proceeding and failed to show an "extraordinary circumstance" necessary to support its request for post-hearing intervention, the Commission properly struck Spark's legally deficient Exceptions and declined to consider them.²⁶ The Commission also properly rejected Spark's argument that the *Blue Pilot* decision authorized consideration of Exceptions filed by a non-party. As the Commission explained, RESA was not a party in *Blue Pilot* and, as such, its Exceptions were not considered.²⁷

Spark's Petition for Reconsideration identifies no newly discovered evidence, error or misapplication of law, or overlooked factual circumstance undermining the Commission's determinations. Rather, Spark broadly reiterates many of the arguments previously rejected by the Commission and contends generally that the Commission overlooked various procedural considerations and erred as a matter of law by failing to

²⁶ See 52 Pa. Code § 5.533(a) ("A party may file exceptions").

²⁷ Sept. 4 Sec. Letter at 4.

exercise its discretion to consider Spark's Exceptions despite Spark's status as a non-party. Neither contention satisfies the standard for reconsideration, as each has been heard and rejected before. As such, Spark's Petition for Reconsideration must be denied.

a. Spark has not identified any overlooked procedural consideration sufficient to warrant reconsideration.

Spark argues that reconsideration is warranted because the Commission overlooked various "material procedural considerations" when it dismissed Spark's Petition to Intervene and struck its Exceptions on an expedited basis. Specifically, Spark advances two main procedural contentions: (1) that the Commission should have waited for the 10-day Answer period to CAUSE-PA's Preliminary Objections – as well as the 20-day Answer period for its Petition to Intervene – before issuing its decision, and (2) that the Commission should have addressed the procedural alternatives offered by Spark and CAUSE-PA.

First, Spark's arguments that the Commission should have waited for the respective Answer periods associated with CAUSE-PA's Preliminary Objections and Spark's Petition to Intervene are without merit.²⁸ Spark makes a convoluted argument that since the time for response to Spark's petitions had not ended and that since CAUSE-PA filed POs that also contained a notice to plead that the Commission's actions to rule on Spark's Petition to Intervene or CAUSE-PA's POs was procedurally defective.²⁹ In support, Spark cites the Commission's decision in a recent Pike County Light & Power rate case in which the Commission determined that the ALJs erred in ruling on a motion before the time provided in the Commission's regulations has expired without affirmatively

²⁸ Spark Pet. for Recon. at 8-12.

²⁹ Id. at 9-10.

providing notice to the parties of an abbreviated response time.³⁰ The ruling in that case is not dispositive. Contrary to the claims made by Spark, the Commission did not rule on CAUSE-PA's POs in this case at all. They dismissed them as moot by ruling on Spark's Petition to Intervene. Spark's rights were not impacted by the fact that the Commission ruled against allowing its late intervention by issuing its ruling before other parties had the chance to answer – and likely contest – Spark's petition. If any party had the right to complain about this, it certainly was not Spark. The Commission took Spark's Petition at face value and found it to be without merit.

Similarly, Spark's repeated reference to alternative procedural proposals does not establish that the Commission overlooked a material consideration. At most, those proposals offered different procedural mechanisms through which the Commission might have reached the same result – but with further delay, and potential impact to the timely disposition of this fully litigated proceeding. The fact that Spark and CAUSE-PA each offered potential procedural alternatives did not cure Spark's failure to establish extraordinary circumstances necessary to justify its late intervention, nor did it confer party status or authorize the filing of Exceptions by a non-party.

Ultimately, Spark's procedural arguments amount to no more than disagreement with how the Commission exercised its discretion in addressing Spark's post-hearing intervention request and its improper filing of non-party Exceptions. Such a disagreement does not satisfy the *Duick* standard.

³⁰ *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.

b. It would be an error of law for the Commission to consider Spark's Exceptions, as doing so would negatively impact the rights of CAUSE-PA and other parties to the proceeding.

Spark argues on reconsideration that the Commission erred as a matter of law in striking its Exceptions based solely on its lack of party status.³¹ Pointing to sections 1.2 and 5.75 of the Commission's regulations and prior Commission precedent, Spark argues the Commission should have invoked other "distinct sources of the Commission's procedural authority" to consider Spark's Exceptions without establishing party status.³²

Spark's claims are without merit, as the cited provision of the Commission's regulations provide no legal or policy basis to justify consideration of Spark's Exceptions. To the contrary, the cited rules support the Commission's decision to deny Spark's Petition to Intervene and strike its legally deficient Exceptions.

First, while section 1.2 allows the Commission to disregard a procedural error or waive a procedural requirement, this flexibility is only permitted if it "does not affect the substantive rights of the parties."³³ Specifically and in relevant part, the rule provides:

- (a) *This subpart 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 any action or proceeding **may disregard an error or defect of procedure which does not affect the substantive rights of the parties.***
- (b) ...
- (c) The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, **if the waiver does not adversely affect a substantive right of a party.**³⁴

³¹ Spark Pet. for Recon. at 12-16.

³² Spark Pet. for Recon. at 15.

³³ 52 Pa. Code § 1.2(a), (c).

³⁴ 52 Pa. Code § 1.2(a), (c) (emphasis added).

Here, waiver of the rules and consideration of Spark's Exceptions would negatively impact the substantive and procedural due process rights of CAUSE-PA and the other parties to this proceeding. As explained in CAUSE-PA's Preliminary Objections, Spark's untimely Petition to Intervene and its improperly filed Exceptions assert facts not in the record, including averments regarding the nature and scope of Spark's operations within FirstEnergy's four operating districts and across the state, as well as claimed impact of FirstEnergy's proposals on these operations.³⁵ Spark also advances new proposals for relief not in the record, and not otherwise proposed by the parties to the proceeding.³⁶ Yet there is no opportunity to interrogate Spark's factual assertions and proposed relief through discovery or cross examination because the record is closed.

Absent the Commission's expedited decision striking Spark's legally deficient Exceptions, CAUSE-PA and the other parties to the proceeding would have been forced to expend substantial time and resources responding to Spark's Exceptions within the compressed 7-day timeframe for parties to file Reply Exceptions, which fell over the Labor Day holiday. This would have added to the negative impact to CAUSE-PA and other parties, further underscoring why application of section 1.2 is inappropriate in this instance.

Section 5.75 also fails to provide a sufficient legal basis to consider Spark's Exceptions. Spark accurately notes that this rule allows the Commission to grant or deny a request for intervention "in whole or in part" and may "authorize limited participation" in

³⁵ CAUSE-PA PO at 5; see also, e.g., Spark Exceptions at 1, 6, 27.

³⁶ Id.

appropriate cases.³⁷ But this provision does not in any way authorize the Commission to waive or otherwise disregard the other requirements of intervention.

In addition to sections 1.2 and 5.75, Spark cites to several prior cases where the Commission *contemplated* consideration of non-party Exceptions to support its claim that the Commission erred as a matter of law in not making a similar consideration here.³⁸ However, Spark admits that the Commission “ultimately denied the requested alternative relief in each instance.”³⁹ Tellingly, Spark does not point to any case where the Commission actually considered the Exceptions of a non-party.

Spark’s claim that the Commission erred as a matter of law is without merit. Waiver of the applicable rules in this instance to consider Spark’s Exceptions as a non-party would violate the plain language of the Commission’s regulations, and there is no legal basis to waive the applicable procedural requirements. As such, Spark’s request to disregard the procedural rules and consider its improperly filed Exceptions as a non-party must be denied.

c. Spark’s reliance on *Respond Power* is misplaced and does not constitute an extraordinary circumstance to warrant post-hearing intervention.

A central theme of Spark’s Petition is its assertion that issuance of the RD created a need to participate in order to avoid a future waiver argument under *Respond Power*.⁴⁰ This argument fails because *Respond Power* does not support Spark’s request; rather, it underscores why the Commission correctly denied Spark’s untimely intervention request.

³⁷ Spark Pet. for Recon. at 15, para. 25.

³⁸ Spark Pet. for Recon. at 14-15.

³⁹ Spark Pet. for Recon. at 13-14.

⁴⁰ Spark Pet. for Recon. at 17-19.

Spark admits that it had actual notice of the proceeding, was served with the DSP filing, knew the supplier tariff provisions at issue, and intentionally declined to intervene.⁴¹ The possibility that future challenges may be limited if objections are not raised during the relevant proceeding was neither unforeseeable nor new.

If Spark genuinely believed *Respond Power* required participation to preserve its rights, Spark possessed that knowledge throughout this proceeding. Spark nevertheless chose not to seek intervention until well after the evidentiary record closed and legal briefing concluded.⁴² Spark cannot invoke *Respond Power* to manufacture extraordinary circumstances from a risk it knowingly accepted. Spark understood throughout the proceeding that nonparticipation could limit a later challenge, yet it waited until after the evidentiary record closed and legal briefing concluded to seek intervention. The foreseeable consequences of that deliberate litigation choice do not satisfy 52 Pa. Code § 5.72(c).

Accepting Spark's reasoning would effectively allow any non-party to remain outside a proceeding, await issuance of a RD, and then seek intervention only if the result appears unfavorable. Such a rule would render the Commission's intervention rules meaningless,⁴³ and as such was appropriately rejected by the Commission.

⁴¹ Spark Pet. for Recon. at 4-5; CAUSE-PA PO at 4.

⁴² CAUSE-PA PO at 3-4; Sept. 4 Sec. Letter at 1-2.

⁴³ Sept. 4 Sec. Letter at 4.

d. Infinity Capital's legally deficient Exceptions do not provide a basis for reconsideration of the Commission's decision to strike Spark's Exceptions.

In support of its request for reconsideration, Spark notes that the Commission has not struck Exceptions filed by Infinity Capital, LLC (Infinity).⁴⁴ This argument is without merit.

Simply put, two wrongs do not make a right. The existence of another improper filing does not excuse Spark's own procedural deficiencies. The legal sufficiency of Spark's Exceptions must be judged under the Commission's regulations and the facts applicable to Spark.

CAUSE-PA does not dispute that Infinity's Exceptions are legally deficient. Not only does Infinity lack party status necessary to file Exceptions, its Exceptions are not properly signed by legal counsel.⁴⁵ Like Spark's Exceptions, Infinity's Exceptions contain facts that are outside the record and, if considered, may prejudice the parties to the proceeding. Nevertheless, and notwithstanding the clear deficiencies with Infinity's filing, the Commission must not compound one procedural irregularity by creating another.

The Commission correctly concluded that Spark's Exceptions must be stricken because Spark is not a party to this proceeding and it has not alleged any "extraordinary circumstances" necessary to warrant intervention after the evidentiary hearing has concluded.⁴⁶ Nothing regarding Infinity's improperly filed Exceptions alters that conclusion.

⁴⁴ Spark Pet. for Recon. at 3, 19-20.

⁴⁵ 52 Pa. Code §§ 1.21(b), 1.22.

⁴⁶ Sept. 4 Sec. Letter at 4.

IV. CONCLUSION

Spark's Petition for Reconsideration fails to meet the standard for reconsideration. Spark identifies no newly discovered evidence, no error of law, and no material fact overlooked by the Commission. The Commission properly applied its regulations governing intervention, correctly determined that Spark failed to establish extraordinary circumstances, properly rejected Spark's misplaced reliance on *Blue Pilot*, and correctly struck Exceptions filed by a non-party. Granting reconsideration and permitting consideration of Spark's Exceptions as a non-party would undermine the finality of Commission proceedings, prejudice parties that complied with the applicable procedural requirements, and weaken the intervention standards established by Commission regulation. For these reasons, and as explained above, CAUSE-PA respectfully requests that the Commission deny Spark's Petition for Reconsideration, affirm the September 4, 2026 Secretarial Letter denying Spark's intervention and striking its improper Exceptions, and grant such other and further relief as may be just and proper.

Respectfully submitted,
Counsel for CAUSE-PA



Elizabeth R. Marx, Esq., PA ID: 309014
Ria M. Pereira, Esq., PA ID: 316771
Lauren N. Berman, Esq., PA ID: 310116
John W. Sweet, Esq., PA ID: 320182
Levi A. Phillips, Esq., PA ID: 338477
Pennsylvania Utility Law Project
118 Locust St., Harrisburg, PA 17101
717-710-3825
pulp@pautilitylawproject.org

September 21, 2026

VERIFICATION

I, **Elizabeth R. Marx, Esq.**, legal counsel for the Coalition for Affordable Utility Services and Energy Efficiency (“CAUSE-PA”), 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 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

A handwritten signature in blue ink, appearing to read "Elizabeth R. Marx".

On behalf of the Coalition for Affordable Utility
Services and Energy Efficiency in Pennsylvania

September 21, 2026