

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held October 1, 2026

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
John F. Coleman, Jr.

Petition of FirstEnergy Pennsylvania Electric
Company for Approval of Its Default Service
Program for the Period from June 1, 2027 to May 31, 2031

P-2026-3060298

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration from Staff Action (Petition), filed by Spark Energy LLC (Spark) on September 11, 2026, seeking reconsideration of the Commission's September 4, 2026 Secretarial Letter (*September 2026 Secretarial Letter*) denying Spark's Petition to Intervene Or, In the Alternative, Motion for Leave to Accept Exceptions.¹ Specifically, Spark requests that

¹ Spark's Petition is filed pursuant to Section 5.44 of the Commission's regulations (pertaining to reconsideration of staff action) or in the alternative Section 5.572 of Commission Regulations (pertaining to post-order petitions for relief). 52 Pa. Code §§ 5.44 and 5.572. As the *September 2026 Secretarial Letter* pertained to a procedural ruling issued by the Secretary of the Commission, rather than a staff action, the Petition will be reviewed as filed under Section 5.572.

the Commission reconsider and modify the *September 2026 Secretarial Letter* by vacating its decision to strike Spark's timely-filed Exceptions and accept Spark's Exceptions to the August 21, 2026 Recommended Decision (Decision or RD) of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon (collectively, the ALJs), in the above-captioned proceeding, even if filed by a non-party.

I. Background and History of Proceeding

The above-captioned proceeding pertains to the petition of FirstEnergy Pennsylvania Electric Company (FE-PA or the Company) requesting that the Commission approve its seventh default service program (FE-PA DSP VII), which it states is designed to procure a prudent mix of long-term, short-term and spot market generation supplies and ensure that default service customers have access to an adequate and reliable supply of generation at the least cost over time for the period beginning June 1, 2027 and ending May 31, 2031.

Notice of the DSP VII filing and of the scheduled Prehearing Conference was published in the Pennsylvania Bulletin at 56 *Pa.B.* 1085 on February 21, 2026. The deadline for intervention was March 17, 2026. *See* 56 *Pa.B.* 1085. Between the dates of February 20, 2026 and March 17, 2026, a number of interested parties filed Petitions to Intervene: including the following entities: the Office of Small Business Advocate (OSBA), the Office of Consumer Advocate (OCA), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), Penn Renewables LLC (Penn Renewables), Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy (collectively, EGS Parties), Met-Ed Industrial Users Group (MEIUG), the Penelec Industrial Customer Alliance (PICA), and the West Penn Power Industrial Intervenors (WPPII) (collectively, Industrial Customer Groups), Dimension PA 1 LLC (Dimension), Sunrise Airport Road LLC, Sunrise Forrester

Road LLC, Sunrise Franklin Road LLC, Sunrise Harlansburg Road LLC, Sunrise Hendersonville Road LLC, Sunrise McCurdy Road LLC, Sunrise Perry Highway LLC, Sunrise Sandy Lake Greenville Road LLC, Sunrise Sandy Lake Polk Road LLC, and Sunrise Springfield Church Road LLC (collectively, Customer-Generator Coalition (CGC)), WGL Energy Services, Inc. (WGL), Town Square Energy East, LLC (Town Square or TSE) (collectively, Town Square and WGL), The Pennsylvania State University (PSU), Solar Energy Industries Association (SEIA) and the Coalition for Community Solar Access (CCSA) (collectively, Joint Solar Advocates), Constellation Energy Generation, LLC (CEG) and Constellation NewEnergy, Inc. (CNE) (collectively, Constellation), Duquesne Light Company (DLC), Walmart Inc. (Walmart), and Retail Energy Supply Association (RESA).

By Prehearing Order dated March 23, 2026, the Administrative Law Judges (ALJs) memorialized the actions taken at the March 19, 2026 Prehearing Conference, such as, *inter alia*, granting the Petitions to Intervene.

The evidentiary hearing was convened, as scheduled, on June 15, 2026 and concluded on that same day.

On July 2, 2026, consistent with the amended schedule of the proceeding, FE-PA filed a Joint Petition for Non-Unanimous Settlement (Settlement). The Settlement was executed by counsel for FE-PA, OCA, OSBA, CAUSE-PA, Walmart, and DLC (Settling Parties). Statements in Support by the Settling Parties are attached as Statements B through F. As part of the Settlement, the Settling Parties were authorized by the Industrial Customer Groups and PSU to represent that they do not oppose the Settlement. Also on July 2, 2026, Penn Renewables filed a letter stating that it opposes the Settlement.

On July 10, 2026 and July 22, 2026, respectively, the following Parties filed Main Briefs and Reply Briefs: FE-PA, the OCA, CAUSE-PA, CGC, Constellation, Dimension, EGS Parties, Joint Solar Advocates, RESA, and Town Square and WGL.

As noted, on August 21, 2026, the Commission issued the Recommended Decision of ALJs Hoyer and Gannon, wherein they recommended that the non-unanimous Settlement be adopted, without modification.

Also, as previously noted, on August 31, 2026, Spark filed its Petition seeking the Commission's approval to intervene in the proceeding or, in the alternative, for the Commission to address the Exceptions of a non-party (Petition for Intervention). Petition at 4 (citing *Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 (Opinion and Order entered June 14, 2018) (and authorities cited therein) (Blue Pilot)).²

On September 1, 2026, CAUSE-PA filed Preliminary Objections and Request for Expedited Relief (CAUSE-PA POs) to dismiss Spark's Petition for Intervention and strike Spark's Exceptions.

On September 2, 2026, Spark filed a letter response to CAUSE-PA's request for expedited relief.

On September 4, 2026, the Commission issued the *September 2026 Secretarial Letter*, in which the Commission: (1) denied Spark's Petition for Intervention; and (2) struck Spark's Exceptions from consideration as filings by a non-party. In addition, based upon the Commission's denial of Spark's intervention and

² On other grounds not relevant to this proceeding, on appeal, the Commonwealth Court affirmed, in part, and reversed, in part. *See Blue Pilot Energy, LLC, v. Pa. PUC*, 241 A.3d 1254 (Pa. Cmwlth. 2020).

rejection of the Exceptions, the Commission found that CAUSE-PA's POs in opposition were denied as moot.

As noted above, on September 11, 2026, Spark filed a Petition for Reconsideration of the *September 2026 Secretarial Letter*.

On September 21, 2026, FE-PA and CAUSE-PA each filed an Answer to the Petition (Answer).

II. Discussion

A. Legal Standards

With respect to petitions for rehearing, reconsideration, rescission, and amendment of Commission orders, the Public Utility Code (Code) establishes a party's right to seek relief within fifteen days following the service of a Commission order pursuant to Subsection 703(f). 66 Pa.C.S. § 703(f) (relating to rehearing).³ Upon the filing of a petition for relief pursuant to Section 703(f), the Commission may affirm, rescind, or modify its original order. 66 Pa.C.S. § 703(f). The Code further provides that the Commission may, at any time, after notice and opportunity to be heard by all affected parties, rescind or amend any order made by the Commission, pursuant to Section 703(g). 66 Pa.C.S. § 703(g) (relating to rescission and amendment of orders). A request for relief pursuant to § 703(f) or § 703(g) must be brought as a petition for relief consistent with Section 5.572 of the Commission's Regulations. 52 Pa. Code § 5.572 (relating to petitions for relief).

³ Petitions under this section which do not allege new evidence are typically treated as petitions for reconsideration. Petitions for rehearing pursuant to Section 703(f) of the Code typically include an allegation of new evidence. 66 Pa.C.S. § 703(f); *see West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995).

Petitions for relief predicated upon Sections 703(f) and 703(g) of the Code, whether brought under Section 5.572(c) of the Commission's Regulations as a petition for reconsideration, rehearing, reargument, clarification, supersedeas, or others within fifteen days of the service of a Commission order, or under Section 5.572(d) as a petition for rescission or amendment filed at any time following service of a Commission order, are reviewed by the Commission as matters seeking relief falling within the agency's discretion.

The Commission's application of the standard for granting a petition for amendment, reconsideration, or rescission is set forth in *Philip Duick, et al. v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982) (*Duick*) as follows:

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part on the grounds that the decision or ruling of the Commission on a matter or issue was either unwise or in error.

In this regard we agree with the Court in the *Pennsylvania Railroad Company* case, wherein the Court said,

[b]ut the grounds for reconsideration should be restricted to the new matters and new or changed conditions set up in the joint petition, which had arisen since and were not presented in the several petitions of these appellants ... and dismissed by the Commission ... and not appealed from. Parties,..., cannot be permitted, by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them and not appealed from. ...

Pennsylvania Railroad Co. v. Public Service Commission, [179 A. 850, 854 (Pa. Super. 1935)].

What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

Duick at 559; *see also AT&T v. Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. 1990).

The Commission utilizes a two-step analysis in determining whether to exercise its discretion to grant relief under *Duick*. *See, e.g., SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket Nos. C-2012-2304183 and C-2012-2304324 (Opinion and Order entered May 9, 2019)⁴ at 4-5 (discussing *Application of La Mexicana Express Service, LLC, to transport persons in paratransit service, between points within Berks County*, Docket No. A-2012-2329717; A-6415209 (Opinion and Order entered September 11, 2014)). The first step is to determine whether a party has offered any basis to persuade the Commission to exercise its discretion, including but not limited to, new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. This initial step examines whether a party raises the same questions which were specifically considered and decided against them by a prior Order of the Commission. If so, it is unlikely that the Commission will be persuaded to exercise its discretion to grant relief. *Duick* at 559 (citing *Pennsylvania Railroad Co. v. Public Service Commission*, 179 A. 850 (Pa. Super. 1935)). The second step of the *Duick* analysis is to evaluate any matter the Commission has deemed worthy of consideration, to determine whether to grant any relief.

Finally, we note that any issue or argument that we do not specifically address shall be deemed to have been duly considered and denied without further

⁴ *Affirmed, Phila. Gas Works v. Pa. PUC*, 249 A.3d 963 (Pa. 2021), *remand granted, in part*, 256 A.3d 1092 (Pa. 2021) (Table).

discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).⁵

B. *September 2026 Secretarial Letter*

The Commission's *September 2026 Secretarial Letter* denied Spark's late-filed Petition for Intervention, struck Spark's Exceptions, and found CAUSE-PA's POs in opposition to Spark's intervention and exceptions to be denied as moot. *September 2026 Secretarial Letter*.

The Commission stated that upon review of the history of the proceedings, the filings and the applicable law, finding no extraordinary circumstances warranting Spark's intervention, it would deny intervention and strike Spark's Exceptions as an impermissible filing by a non-party.

Furthermore, the Commission rejected Spark's argument under *Blue Pilot* that the Commission's procedural treatment of the intervention sought by RESA in *Blue Pilot* weighs in favor of accepting Spark's Exceptions in the present circumstances, even if intervention is denied in this case. Specifically, in *Blue Pilot*, RESA's request for intervention was denied, rendering RESA a non-party. Following denial of RESA's intervention, the Commission did not address the exception filed by RESA. Rather, the Commission addressed the Exception of *Blue Pilot* which raised the same issue raised by

⁵ *See also, Metropolitan Edison Co. v. Pa. PUC*, 22 A.3d 353 (Pa. Cmwlth. 2011), *appeal denied*, 22 A.3d 353 (Pa. 2012) (citing *Wheeling & Lake Erie Railway Company v. Pa. PUC*, 778 A.2d 785, 794 (Pa. Cmwlth. 2001) for the proposition that the Commission is not required to expressly consider all of the arguments set forth by the parties in its Order).

RESA in its request to intervene. *See Blue Pilot* at 78-81. The Commission concluded that *Blue Pilot* does not provide support for accepting exceptions filed by a non-party.

In addition, the Commission stated that since the Commission was denying Spark's Petition, Spark was not a party to this matter and, therefore, its Exceptions would be stricken as filings by a non-party and would not be considered by the Commission.

Finally, given the Commission's denial of Spark's Petition, the Commission found CAUSE-PA's POs in opposition to Spark's filing to be denied as moot. *See September 2026 Secretarial Letter*.

C. Spark's Petition and Answers

In its Petition, Spark requests that the Commission reconsider and modify the *September 2026 Secretarial Letter* by vacating its decision to strike Spark's timely-filed Exceptions and consider Spark's Exceptions to the August 21, 2026 Recommended Decision regarding the FE-PA DSP VII. Spark argues that the consideration of its Exceptions will assist the Commission's review by permitting consideration of Spark's timely-filed, record-based legal objections before determining whether FE-PA's original challenged supplier tariff revisions—which neither the non-unanimous settlement nor the Recommended Decision modified despite a fully litigated evidentiary record—should ultimately be adopted as final tariff provisions that will later be applied to Spark's operations. Petition at 2-3.

Furthermore, 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 and that doing so risked a later determination that Spark had forfeited its opportunity to challenge those supplier tariff provisions because it had not raised its legal objections before they became final like Respond Power (citing *Respond Power, LLC v.*

Pa. PUC).⁶ 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. Petition at 2-3.

Spark also avers that its Petition presents an important procedural question arising in this very proceeding. Specifically, Spark notes, Infinity Capital, although not a party, filed Exceptions without seeking intervention or leave to file.⁷ Spark notes that those non-party exceptions have not been stricken from the record. Spark explains that although FE-PA argues that Infinity Capital LLC's (Infinity Capital) non-party Exceptions should be disregarded, it nevertheless responds to the specific legal issues they raise.⁸ In Spark's view, the differing procedural treatment of those non-party exceptions demonstrates that striking Spark's contemporaneously filed Exceptions was not procedurally inevitable. Petition at 3.

In its Answer, FE-PA asserts that Spark's Petition should be denied as failing to raise any new or novel arguments not considered in the *September 2026 Secretarial Letter* denying Spark's Petition for Intervention or any overlooked matters to satisfy the *Duick* standard. Rather, FE-PA argues that Spark, through its Petition, raises the same arguments considered and rejected in the *September 2026 Secretarial Letter*. FE-PA avers that, under *Duick*'s step two, even if the Commission were to reconsider the *September 2026 Secretarial Letter*, no modification is warranted because the

⁶ *Respond Power, LLC v. PA PUC*, No. 260 C.D. 2020, filed February 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.

⁷ Exceptions of Infinity Capital dated August 25, 2026.

⁸ FE-PA Reply Exceptions at 2-3 and 8-10.

Commission properly applied its regulations, correctly applied the holding in *Blue Pilot*, and was within its broad procedural authority in denying Spark's request for intervention and for leave to file Exceptions. FE-PA Answer at 3-16.

Similarly, in its Answer, CAUSE-PA asserts that Spark has not identified any overlooked procedural consideration sufficient to warrant reconsideration, as required under *Duick*. In addition, CAUSE-PA asserts that it would be an error of law for the Commission to consider Spark's Exceptions, on the basis that doing so would cause unwarranted prejudice to and negatively impact the rights of CAUSE-PA and other parties to the proceeding. CAUSE-PA argues that Spark's reliance on *Respond Power* is misplaced and does not constitute an extraordinary circumstance to warrant post-hearing intervention. CAUSE-PA notes that the general proposition for which Spark cited in *Respond Power*, that a party may not raise a challenge after the entry of a final order, is not a justification for permitting a non-party to file a late intervention after actual notice and opportunity to participate in the proceeding. Finally, CAUSE-PA argues that the fact that Infinity Capital's Exceptions are legally deficient does not provide a basis to support reconsideration of the Commission's decision to properly strike Spark's Exceptions. CAUSE-PA Answer at 6-12.

D. Disposition

Turning to the Petition, upon review, we shall deny it. As mentioned, *supra*, petitions governed by *Duick* essentially require a two-step analysis. First, we must determine whether a party has offered new or novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission

in its previous order.⁹ We will not reconsider our previous decision based on arguments that have already been considered. However, we will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. The second step of the *Duick* analysis is, therefore, to evaluate the new or novel argument or overlooked consideration, to determine whether to modify our previous decision.

Upon review, we find that Spark, in its Petition, does not raise any new or novel arguments or considerations that were overlooked or not addressed by the Commission in the *September 2026 Secretarial Letter*. Spark, in its Petition, fails to meet the *Duick* standard for reconsideration because it neither identifies any errors of law or fact, nor does it raise any new arguments or evidence not previously heard by the Commission. As the arguments are not new and novel and were previously addressed by the Commission, the Petition fails to satisfy the first step required in the analysis under *Duick* and shall be denied.

Moreover, we acknowledge Spark's averment that Infinity Capital, although not a party, filed Exceptions without seeking intervention or leave to file and those Exceptions have not been stricken from the record. However, while the fact that Infinity Capital's Exceptions were filed at this docket, and addressed by FE-PA notwithstanding the assertion that the Exceptions should be disregarded, may lend credence to Spark's position (*i.e.*, that the Exceptions filed by a non-party may

⁹ With respect to petitions for rescission, specifically, the Commission has stated that in order "[t]o establish a proper basis for rescission, a petitioner must first establish the existence of newly discovered evidence, a substantial change in circumstances, or an error of fact or law." *See Floyd v. PECO Energy Co.*, Docket No. F-2018-3001465 (Opinion and Order entered August 8, 2019) (citing *Feleccia v. PPL Electric Utilities Corp.*, Docket No. C-20016210 (Order entered March 7, 2003), slip op. at 3 (citing *Duick* at 559)).

nevertheless be addressed on the merits), we do not find that argument to be a persuasive basis for vacating our *September 2026 Secretarial Letter* and accepting Spark's Exceptions for consideration.¹⁰ As a procedural matter, the Exceptions filed by Infinity Capital, whether by a non-party or not, and whether accepted for consideration or not, are matters which have not yet been ruled upon. Therefore, we are not persuaded that the posture of the Infinity Capital Exceptions is a basis to accept Spark's Exceptions.

For these reasons, we conclude that the Petition fails to raise any basis to persuade us to reconsider the *September 2026 Secretarial Letter* in accordance with *Duick*. Accordingly, the Petition will be denied.

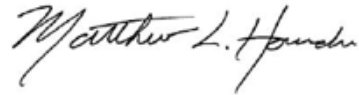
III. Conclusion

For the reasons set forth above, we shall deny the Petition for Reconsideration, consistent with this Opinion and Order; **THEREFORE,**

¹⁰ See Exceptions of Infinity Capital dated August 25, 2026.

IT IS ORDERED: That the Petition for Reconsideration filed by Spark Energy, LLC on September 11, 2026, seeking reconsideration of the Commission's Secretarial Letter issued September 4, 2026, at Docket No. P-2026-3060298, is denied.

BY THE COMMISSION,

A handwritten signature in black ink, reading "Matthew L. Homsher". The signature is written in a cursive, flowing style.

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: October 1, 2026

ORDER ENTERED: October 1, 2026