**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for :

Approval of Its Default Service Program for : P-2020-3019290

the Period From June 1, 2021 Through :

May 31, 2025 :

**ORDER**

**ON PETITION FOR CERTIFICATION**

On June 16, 2020, NRG Energy, Inc., Direct Energy Services LLC, Interstate Gas Supply, Inc. d/b/a IGS Energy, Vistra Energy Corp., Shipley Choice LLC, ENGIE Resources LLC and WGL Energy Services, Inc. (collectively, the “Coalition” or “ESC”) served the direct testimony of its witness Travis Kavulla, who presented a review of whether PECO Energy Company’s DSP V Plan is consistent with the development of the competitive retail market.

On June 19, 2020, PECO served Interrogatories, Set I, on ESC. On June 24, ESC served Objections to PECO’s Interrogatories, Set I, Nos. 2, 4, 5 and 6, which read:

PECO-ESC-I-2. Reference ESC Statement No. 1, p. 6, lines 10-12. For the members of the Electric Supplier Coalition in aggregate, please provide the following data for each of the last five full years by customer procurement group (Residential, Small Commercial, Large Commercial and Industrial):

Total sales in aggregate in MWH in PECO's service area.

Total sales revenues in aggregate in dollars in PECO's service area.

PECO-ESC-I-4. Reference ESC Statement No. 1, p. 8, line 22 to page 9, line 1. For each member of the Electric Supplier Coalition, please provide:

The number of residential customers in PECO's service area served by that supplier as of June 1, 2020.

The percentage of residential customers in PECO's service area served by that supplier who are paying a price for electric generation service greater than PECO's Price-to-Compare in effect as of June 1, 2020.

PECO-ESC-I-5. Reference ESC Statement No. 1, p. 6, lines 10-12. Please provide a list of any actions filed at the Commission or in court in the past 10 years against members of the Electric Suppliers Coalition, or an EGS owned by or affiliated with a member of the Electric Suppliers Coalition, where the Plaintiff claims that a retail electric and/or natural gas supplier operating in a state with retail access charged more than the local utility default service rates. Please identify the name of the case, jurisdiction, docket number, and its current status.

PECO-ESC-I-6. Reference ESC Statement No. 1, p. 8, lines 14-16, where Mr. Kavulla states, "The Wind Solar Alliance Report focuses on one negative consequence, namely the lack of long-term contracts that are signed to supply customers in Pennsylvania and other states that have a similar, domineering DSP." Have the Electric Suppliers Coalition members signed long-term contracts (10 years or longer) for Alternative Energy Credits with Large Commercial and Industrial Customers in PECO's service territory? If so, provide the total MWH of Alternative Energy Credits supplied in aggregate under those contracts in PECO's service territory for each of the last five full years.

ESC objected to the interrogatories listed above on the grounds that they seek information that is both irrelevant and privileged.

On June 26, 2020, PECO filed a Motion to Dismiss Objections and Compel Answers to Interrogatories, Set I, Nos. 2, 4, 5 and 6 (“Motion to Compel” or “Motion”). In its Motion, PECO argued that the information sought through the interrogatories in question is relevant given that Mr. Kavulla’s testimony proposes “structural changes” to the existing statutory default service framework, including removal of PECO as the default service provider. PECO’s Motion to Compel, at 3-4, citing ESC St. No. 1, at. 6-14. PECO pointed out that, in his testimony, Mr. Kavulla avers that the retail electricity market in the Commonwealth is “stagnant”and further asserts that “in the presence of a dominant DSP, the EGS market is designed primarily to consist of shorter-run arrangements that undercut the DSP.” *Id.* In addition, Mr. Kavulla opposes PECO’s procurement of long-term solar contracts, in part because he believes that such contracts will hamper the willingness and ability of EGSs to undertake similar contracts and solar projects. *Id.* PECO argues that the information sough is directly relevant to the Commission’s evaluation of Mr. Kavulla’s testimony and ESC’s position in this case.

With regard to ESC’s claim that the information sought could be “highly sensitive commercial information,” PECO agreed to amend PECO-ESC-I-4 to seek information in aggregate form and points out that the provisions of the Protective Order entered in this proceeding provide special “highly confidential” protection for information among the parties. PECO’s Motion to Compel, at 4-5.

On June 29, 2020, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (together, TURN *et al*.) filed a Joint Answer of in Support of PECO’s Motion to Compel.

On June 29, 2020, ESC filed its Answer to PECO’s Motion wherein it reiterated its objections on the grounds of relevancy and privilege. ESC further added that Interrogatories, Set I, Nos. 2, 4, 5 and 6 deprive ESC of its due process rights in this proceeding by asking ESC member to divulge details about their business practices. ESC Answer, at 2 and 5.

By Order dated July 2, 2020, I granted PECO’s Motion to Compel after finding that the information sought by PECO’s Interrogatories, Set I, Nos. 2, 4, 5 and 6 is relevant to the subject matter involved in the pending action, and that any commercially sensitive information sought by the discovery requests in question was sufficiently protected by the terms of the Protective Order set in place o May 7, 2020, and by the process of the aggregation of information from seven different EGS-es.

On July 6, 2020, ESC filed a Petition for Certification of a Ruling on a Discovery Matter (Petition), requesting interlocutory review of the July 2, 2020 Order. The Petition did not request a stay of the proceeding.

The proposed Question for Certification is as follows:

*Whether it was appropriate to direct electric generation suppliers (“EGSs”) to produce pricing, sales, complaint and long-term contract information relating to the competitive generation services they provide to shopping customers in the retail market in a proceeding that is designed to establish the parameters under which PECO will provide default generation service to non-shopping customers in a regulated market?*

On July 13, 2020, ESC filed a Brief in support of the Petition. Also, on July 13, 20, PECO filed a Brief in opposition to the Petition.

The Pennsylvania Public Utility Code (“Code”) states that:

an interlocutory appeal from a ruling of the presiding officer on discovery shall be allowed only upon certification by the presiding officer that the ruling involves an important question of law or policy which should be resolved at that time. Notwithstanding the presiding officer's certification, the commission shall have the authority to dismiss summarily the interlocutory appeal if it should appear that the certification was improvident. An interlocutory appeal shall not result in a stay of the proceedings except upon a finding by the presiding officer and the commission that extraordinary circumstances exist.

66 Pa. C.S. § 333(h). In addition, section 5.304 of the Commission’s regulations regarding interlocutory review of discovery matters states that:

 (a) *General*. Rulings of presiding officers on discovery are not subject to interlocutory review unless one or more of the following apply:

(1) Interlocutory review is ordered by the Commission.

(2) Interlocutory review is certified by the presiding officer.

(3) The ruling has as its subject matter the deposing of a Commissioner or Commission employee.

(b) *Standard for certification*. A presiding officer may certify that a discovery ruling is appropriate for interlocutory review when the ruling involves an important question of law or policy that should be resolved immediately by the Commission.

52 Pa. Code § 5.304.

Interlocutory reviews of discovery orders are generally disfavored and are only permitted in limited circumstances. *See MCI WorldCom Communications, Inc. v. Verizon Pennsylvania Inc*., Docket No. C-00015149, at pp. 14-15 (Order entered Nov. 13, 2001) (“*MCI WorldCom*”). Important questions of law or policy are not implicated by routine discovery rulings that deem information outside the scope of a case to be irrelevant. *See Whemco-Steel Castings, Inc. v. Duquesne Light Company*, Docket No. C-2014-2459527, at pp. 4-5 (Interim Order issued by Administrative Law Judge Jeffrey A. Watson Aug. 27, 2015) (“*Whemco-Steel*”); *see also Pa. Pub. Util. Comm’n v. Dauphin Consolidated Water Supply Co.*, 1987 Pa. PUC LEXIS 215, at \*9 (Opinion and order entered Aug. 21, 1987) (“*Dauphin Consolidated*”) (“there is nothing exceptional about disputes over the scope of discovery…”).

In its Brief, ESC argues that interlocutory review is necessary to prevent substantial prejudice to the members of the Coalition. In particular, ECS argues that the certification of the material question is necessary to protect ESC’s due process rights; and because the July 2 Order overlooked a number of reasons that PECO’s Interrogatories are objectionable. ESC Brief at 6-7. These reasons, according to ESC, are:

1. The Permissible Scope of Discovery is Broad But Not Unlimited;
2. The Information Sought Does Not Exist in the Format Requested;
3. Producing Confidential Data in the Aggregate Would Deprive the Coalition of its Fundamental Rights of Due Process;
4. The Data is So Highly Confidential Such that Aggregation Among Seven Suppliers Would Not Ensure its Protection;
5. EGS Data Relating to the Sale of Electricity to Shopping Customers in the Competitive Retail Market is Largely Irrelevant to the Provision by PECO of Default Service to Non-Shopping Customers in a Regulated Environment

This Order will address each of these claims individually, albeit not in the order presented.

1. Relevancy

ESC maintains that the July 2 Order overlooks the fact that the disputed interrogatories seek information that is irrelevant to the pending action. ESC Brief, at 12. I disagree. The July 2 Order addressed the relevancy aspect of each disputed interrogatory individually. In particular, PECO-ESC-1-2 seeks aggregated data for ESC members regarding their total sales (in MWh) and sales revenue in PECO’s service territory over the last five years for the **same customer groups** for which PECO proposes to procure default generation service in DSP V. See PECO Motion to Compel at 6. The July 2 Order found that this information is relevant in assessing the extent to which ESC members can expand their business under the DSP program components that PECO is proposing to continue in DSP V.See July 2, 2020 Order at 4.

PECO ESC-I-4 requests that ESC provide aggregate information as to the total number of customers that ESC members serve in PECO’s service territory, and the aggregate percentage of those customers who are charged more than PECO’s PTC for generation service by ESC members. The July 2 Order found that this data is relevant to the pending action because it will permit PECO to assess whether Mr. Kavulla’s assertion that EGSs must primarily “undercut” PECO’s PTC under DSP IV, or whether EGSs are able to charge higher prices. For the same reason, the information sought by PECO ESC-I-5 was found to be relevant as the interrogatory requests ESC to list any proceedings in which ESC member pricing above the price charged by a local utility has been asserted. See July 2, 2020 Order at 4.

Lastly, the July 2 Order found that the information requested in PECO-ESC-I-6 is relevant to Mr. Kavulla’s opposition to PECO’s proposed solar proposal on the grounds that EGSs are unwilling to enter into long-term renewable energy contracts if an EDC is entering into such contracts to meet a portion of AEPS requirements[[1]](#footnote-1) as default service provider. See July 2, 2020 Order, at 4.

In its Brief, ESC grounds its objection regarding the relevancy of the information sought by PECO’s Interrogatories, Set I, Nos. 2, 4, 5 and 6 on the premise that “EGS activities in the competitive retail market are **largely irrelevant** to how PECO fulfills its role as a default service provider in the regulated environment.” ESC Brief, at 10. Notably, ESC cannot make the argument that EGS activities are **wholly irrelevant** to PECO’s activities in its role as a default service provider. While PECO, as an electric distribution company (EDC) and a regulated public utility, is tasked to serve non-shopping customers in its territory, members of the ESC are serving the shopping customers within the same territory. The demarcation between the two groups of customers is fluid and hardly “set in stone.” PECO customers continually make the decision to shop or not shop for their electricity supply.[[2]](#footnote-2) Additionally, both PECO and the members of the ESC fulfil their duties to their respective customers by participating in the marketplace, albeit at different levels of regulatory oversight. I find that the information sought in PECO’s Interrogatories, Set I, Nos. 2, 4, 5 and 6 and at the base of Mr. Kovulla’s statements referenced in these interrogatories falls in the area where the activities and duties of PECO and the ESC members intersect. It is due to these similarities and interconnections that the Coalitions’ prices, numbers of customers, volumes of sales, contract provisions with large commercial and industrial customers, and complaints filed against its members are relevant to ESC’s observations about the competitiveness of PECO’s default service market. These facts are relevant as to whether the Commission should consider the status of that market as it decides whether PECO’s proposed DSP V Plan meets the objectives of the Competition Act and whether certain elements of the Plan may be interfering with the Commission’s statutory obligations to ensure the development of a competitive generation market. Consequently, PECO’s Interrogatories, Set I, Nos. 2, 4, 5 and 6 seek information that is relevant to the present matter.

As stated in the July 2 Order, PECO linked the information sought in each of the disputed interrogatories to the corresponding portion of ESC’s Direct Testimony. At no point during this discovery dispute did ESC challenge the ability of the information sought in each interrogatory to assess the validity of Mr. Kavulla’s referenced assertions. Arguing at this stage that the information sought in these four interrogatories is irrelevant to the subject matter of this case is tantamount to claiming that specific portions of Mr. Kavulla’s direct testimony on behalf of ESC are irrelevant to the matter at hand. See July 2 Order, at 4.

The dissonance between Mr. Kavulla’s statements and ESC’s claim of irrelevancy regarding PECO’s Interrogatories, Set I, Nos. 2, 4, 5 and 6 is further highlighted in ESC’s Brief. There, ESC argues that its “activities in the competitive retail market are largely irrelevant to how PECO fulfills its role as a default service provider in the regulated environment.” The Coalition further explains that:

How EGS price their competitive retail products, how many customers they serve, how much electricity they sell to their customers, whether their shopping customers complain about their prices and how they structure their energy supply contracts **have nothing to do with how PECO’s regulated default generation service is procured or sold to non-shopping customers.**

ESC Petition at 2. However, if the aggregate number of customers EGSs serve and the manner in which they price their service with respect to the PTC have “nothing to do” with how PECO procures default service supply or sells that default service supply, it is difficult to see how ESC and Mr. Kavulla can claim that PECO’s proposed DSP V can be adverse to the activities of ESC members. See PECO Brief, at 9.

Clearly, the more ESC argues against the disclosure of the information sought in PECO’s Interrogatories, Set I, Nos. 2, 4, 5 and 6, the more it undermines many of the arguments that Mr. Kavulla laid out in his Direct Testimony. The two cannot be reconciled without accepting that the information requested by PECO’s interrogatories is relevant to the subject matter of the pending action.

1. Protected Information

ESC argues in its Brief that the data sought by PECO’s Interrogatories is so highly confidential that the aggregation among the seven suppliers that are members of the Coalition would not ensure its protection. ESC Brief, at 10. In its Brief, ESC maintains that, if disclosed in discovery, this highly confidential information will be improperly protected from: 1) the members of ESC (see ESC Brief, at 10-11); and 2) the public (see ESC Brief, at 11).

With regard to ESC’s claims that the information sought in the Interrogatories in question is highly commercially sensitive, the July 2 Order found that: 1) PECO ESC-I-5 seeks information that is already in the public domain; and 2) the information sought by PECO ESC-I-2, 4 (as later modified by PECO) and 6 will be sufficiently protected by the combined effect of the aggregation of data from seven electric suppliers and of the terms of the Protective Order issued on May 7, 2020 (Protective Order), which included specific provisions to protect highly sensitive commercial information. July 2, 2020 Order, at 5.

The terms of the Protective Order were circulated, discussed, and accepted by the all the parties in this case, including ESC, before they were memorialized as May 7, 2020 Protective Order. In pertinent parts, paragraphs 6 and 7 of the Protective Order read:

6. Information deemed “HIGHLY CONFIDENTIAL” protected material shall be provided to a Reviewing Representative, provided, however that a Reviewing Representative, for purposes of “HIGHLY CONFIDENTIAL” protected material, is limited to a person who has signed a Non-Disclosure Certificate and is:

* + 1. A statutory advocate, or an attorney for a statutory advocate, pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a party;
		2. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i);
		3. An outside expert or an employee of an outside expert retained by a party for the purposes of advising that party or testifying in this proceeding on behalf of that party; or
		4. A person designated as a Reviewing Representative for purposes of Highly Confidential protected material pursuant to paragraph 11.

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission’s Rules of Practice and Procedure (52 Pa. Code §§ 5.362, 5.365(e)) any party may, by objection or motion, seek further protection with respect to HIGHLY CONFIDENTIAL protected material, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

7. For purposes of this Protective Order, a Reviewing Representative may not be a “Restricted Person” absent agreement of the party producing the Proprietary Information pursuant to Paragraph 11. A “Restricted Person” shall mean: (a) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor’s products or services or advising another person who has such duties; (b) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor's products or services or advising another person who has such duties; (c) an officer, director, stockholder, owner, agent (excluding any person under Paragraph 6.i or 6.ii), or employee of a competitor of a customer of the parties or of a competitor of a vendor of the parties if the Proprietary Information concerns a specific, identifiable customer or vendor of the parties; and (d) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert’s interest in the business would provide a significant motive for violating the limitations of permissible use of the Proprietary Information.

Protective Order, ¶¶ 6-7. Additionally, the Protective Order requires each Reviewing Representative to sign the Non-Disclosure Certificate, attached as Appendix A to the Protective Order.

In view of the above, the aggregation of the data, **in addition to** the non-disclosure requirement imposed by the Protective Order upon the Reviewing Representative of each party and the prohibition of any individual falling in the category of “Restricted Person” from having access to the data disclosed in discovery, sufficiently protects any highly commercially sensitive information sought in PECO ESC-I-2, 4 (as later modified by PECO) and 6 from being improperly shared or disclosed with the public or the competition.

Similarly, ESC’s concern that the information in question, even in its aggregate form, will be improperly protected from the members of ESC ignores the protection afforded by the terms of the Protective Order. It does so, while simultaneously admitting that “**neither the ESC’s witness nor the other members of the Coalition would be able to view this data without breaching its commercial sensitivity**.” ESC Brief, at 9. (Emphasis added). While each ESC member will provide their individual data requested by PECO ESC-I-2, 4 (as later modified by PECO) and 6, none but the Reviewing Representative selected in advance by ESC can review the aggregate information created by ESC’s attorney. This approach will sufficiently protect the information in question from improper use and disclosure.

1. Discovery request is overly burdensome

In its Brief, ESC argues that the requested data “does not exist on a shelf and would be overly burdensome to produce.” ESC Brief, at 9. Discovery responses routinely require some level of aggregation of data and some alteration of the form in which the data originally exist. That is even more the case when the party preparing the discovery responses is a multi-member coalition.

The existence of the data “on a shelf” is not on established requirement for the production of discovery responses. On the contrary, the Commission’s regulation at 52 Pa. Code § 5.361(a) specifically prohibits parties in rate cases from objecting to discovery requests merely because the discovery request requires the compilation of data or information which the answering party does not maintain in the format requested. The Commission’s regulation at 52 Pa. Code § 5.361(a) does not support ESC’s faulty conclusion that, since the present case is not a rate case, “parties **may not be required** compile data that currently does not exist.” ESC Brief at 9, FN 19. (Emphasis added). Instead, the conclusion supported by the regulation is that parties in non-rate cases **may object** to being required to compile data in a form that currently does not exist. Whether or not that objection is sustained depends on the circumstances of each case.

In the present case, ESC’s objection to being required to compile data in a form that currently does not exist is not warranted. The task of gathering the data is shared by seven different companies, who will, or should, be working simultaneously to submit the data to ESC’s counsel for aggregation. As for any difficulties attributed to COVID-19, those are shared by all the parties involved in this case and have been present since the beginning. See ESC Brief, at 9. Consequently, the production of the discovery responses in question is reasonable and overly burdensome for ESC.

1. Due process rights

In its Brief, ESC reiterates its claim that producing the discovery response in question would deprive the Coalition of its fundamental rights of due process. See ESC Brief, at 9-10. The claim was originally based on ESC’s argument that PECO’s interrogatories seek information that is irrelevant and protected. See ESC Answer to Motion to Compel, at 9. The July 2 Order and the present one refute these arguments as well ESC’s claim that the production of the discovery responses in question is overly burdensome for its members. The July 2 Order further explained that ESC and any other EGSs that participate in proceedings before the Commission have the same rights and obligations as any other party in terms of discovery and due process. July 2 Order, at 5. Just as the ESC has the fundamental due process right to present its views on how PECO’s DSP V Plan stacks up against the requirements of the Competition Act, so does PECO have a due process right to seek information from ESC to assess the validity of Mr. Kavulla’s assertions. *Id.*

In its Brief, ESC introduces two more grounds for its claim of due process violation. First, it argues that its counsel – who will be tasked to aggregate the data produced by the ESC members – is not a witness, is not qualified to understand the information in question, and would therefore be unable to verify the response to the interrogatories. ESC Brief, at 9-10. This situation is easily rectified by having the members of ESC verify their individual responses to the interrogatories before turning them over to ESC’s counsel for aggregation. If ESC’s attorney still feels unqualified to understand the information submitted by the EGSs and unable to verify the aggregate responses, ESC could utilize Mr. Kovulla, a witness who works for one of the Coalition’s members or hire an outside expert to assist in the process. The inability of EGSs to utilize a reconcilable rate mechanism to recover the costs incurred by this method does not render these costs unbearable or unreasonable in view of the very limited scope of the task at hand. See ESC Brief at 10, FN 21.

Second, ESC argues that its fundamental due process rights would be violated because neither the ESC’s witness nor the other members of the Coalition would be able to view the aggregated date in its final form without breaching its commercial sensitivity. ESC Brief, at 9-10. This argument is faulty because the terms of the Protective Order assign to the parties the same rights and restrictions for handling information that is labelled “HIGHLY CONFIDENTIAL.” Just as PECO and other parties would be able to evaluate, analyze or otherwise use this aggregated data through their Reviewing Representative, so would the ESC’s Reviewing Representative have the opportunity to review and use the aggregate responses submitted by the Coalition. If any additional restrictions exist that prevent ESC’s Reviewing Representative from doing so, they are not listed in the Coalition’s Petition or Brief and would most likely be self-imposed and not the result of the process.

1. Permissible scope of discovery

Lastly, I turn to ESC’s claim that the requested information falls outside the permissible scope of discovery. ESC Brief at 7-8. The July 2 Order and the present one have both shown that the information sought in PECO ESC-I-2, 4, 5 and 6 is : relevant to the subject matter of the pending action; 2) duly protected from disclosure of privileged information or trade secrets; 3) not overly burdensome; and 4) not sought in bad faith or in violation of ESC’s due process rights.

In its Brief, ESC refers to the *Special Restrictions* provision of 52 Pa.Code § 5.365 (regarding Orders to Limit Availability of Proprietary Information) to argue that, while some proprietary information may be produced pursuant to a protective order, other information may trigger the issuance of a protective order that “totally prohibits the disclosure of a trade secret or other confidential information” when “the party from whom the information is sought demonstrates that a greater restriction is necessary to avoid severe and extreme prejudice.” The complete language of 52 Pa.Code § 5.365(e) is as follows:

(e)  *Special restrictions*. A protective order which totally prohibits the disclosure of a trade secret or other confidential information, limits the disclosure to particular parties or representatives of parties, except as permitted by subsection (c), or which provides for more restrictive rules than those permitted in subsections (b) and (c) **will be issued only in extraordinary circumstances** and only when the party from whom the information is sought demonstrates that a greater restriction is necessary to avoid severe and extreme prejudice.

52 Pa.Code § 5.365(e). (Emphasis added). In its Brief, ESC is seeking the protections afforded by 52 Pa.Code § 5.365(e) without showing that extraordinary circumstances are present, which require additional protection for the information sought by PECO’s Interrogatories than that afforded by 52 Pa.Code § 5.365 (a) – (d) as incorporated in the Protective Order. While it is true that the Commission has refused to require a party to produce proprietary information even in the existence of a protective order so as to protect the integrity of future pricing and business strategies, the interrogatories in question require neither. In view of the above, the information requested falls squarely within the realm of permissible discovery.

CONCLUSION

At the heart of the present Petition lays a standard discovery ruling regarding relevancy, privilege, and reasonableness of the burden imposed. As such, it falls within the routine scope of discovery and does not raise an issue that is either novel or of such importance that it merits interlocutory review by the Commission. ESC fails to identify the question(s) of law or policy to be resolved by certifying the questions and they have failed to demonstrate that the discovery of the requested information is necessary to prevent substantial prejudice to the parties or expedite the conduct of this proceeding. The Petition does not raise any issue that cannot be satisfactorily cured during the normal Commission review process, see *Application of Rasier-PA, LLC*, PUC Docket No. P-2014-2431743 (Opinion and Order entered July 24, 2014), or even during the normal discovery process.

The Material Question presented in the Petition does not involve important issues of law or policy that should be resolved immediately by the Commission. ESC’s Petition fails to meet the stringent requirements for interlocutory review of discovery matters. The Petition is denied.

 THEREFORE,

 IT IS ORDERED:

1. That the Petition for Certification of a Ruling on a Discovery Matter filed by NRG Energy, Inc., Direct Energy Services LLC, Interstate Gas Supply, Inc. d/b/a IGS Energy, Vistra Energy Corp., Shipley Choice LLC, ENGIE Resources LLC and WGL Energy Services, Inc. (collectively, the “Electric Supplier Coalition” or “ESC”) is denied.

July 16, 2020 /s/

 Eranda Vero

 Administrative Law Judge

P-2020-3019290 - PETITION OF PECO ENERGY COMPANY FOR APPROVAL OF ITS DEFAULT SERVICE PLAN FOR THE PERIOD FROM JUNE 1, 2021 THROUGH MAY 31, 2025

***Revised 07/02/20***

CRAIG WILLIAMS ESQUIRE
ANTHONY GAY ESQUIRE
JACK GARFINKLE ESQUIRE
PECO ENERGY COMPANY

2301 MARKET STREET

LEGAL DEPARTMENT S23-1

PHILADELPHIA PA 19103
215.841.5974

215.841.4635
215.841.4608
*ACCEPTS E-SERVICE*
*Representing PECO Energy Company*

KENNETH M KULAK ESQUIRE
BROOKE E MCGLINN ESQUIRE

MORGAN LEWIS & BOCKIUS LLP

1701 MARKET STREET

PHILADELPHIA PA 19103-2921

215.963.5384
215.963.5404
*ACCEPTS E-SERVICE*
*Representing PECO Energy Company*

CHARIS MINCAVAGE ESQUIRE
ADEOLU A BAKARE ESQUIRE
JO-ANNE THOMPSON ESQUIRE

MCNEES WALLACE & NURICK

100 PINE STREET

PO BOX 1166

HARRISBURG PA 17108

717.237.5437
717.237.5290

717.237.5285
*ACCEPTS E-SERVICE*
*Representing “PAIEUG”*

KAREN O MOURY ESQUIRE
DEANNE M O'DELL ESQUIRE
ECKERT SEAMANS CHERIN & MELLOTT LLC

213 MARKET STREET

HARRISBURG PA 17101

717.237.6036
717.255.3744
*ACCEPTS E-SERVICE
Representing “Electric Supplier Coalition”*

JOHN F LUSHIS JR ESQUIRE
JAMES LASKEY ESQUIRE

NORRIS MCLAUGHLIN PA

515 WEST HAMILTON STREET
SUITE 502

ALLENTOWN PA 18101

484.765.2211
908.252.4221
jlushis@norris-law.com
jlaskey@norris-law.com
*Representing Calpine Retail Holdings, LLC*

ELIZABETH R MARX ESQUIRE
RIA PEREIRA ESQUIRE
JOHN SWEET ESQUIRE
PA UTILITY LAW PROJECT

118 LOCUST STREET

HARRISBURG PA 17101

717.236.9486
717.710.3839

717.701.3837
*ACCEPTS E-SERVICE
Representing “CAUSE-PA”*

DEVIN MCDOUGALL

EARTH JUSTICE

1617 JOHN F. KENNEDY BLVD
SUITE 1130

PHILADELPHIA PA 19103

917.628.7411
*ACCEPTS E-SERVICE*
*Representing “Environmental Stakeholders”*

LOGAN WELDE ESQUIRE

CLEAN AIR COUNCIL

135 S 19TH STREET

SUITE 300

PHILADELPHIA PA 19103

215.567.4004
*ACCEPTS E-SERVICE*
*Representing “Environmental Stakeholders*”

DAVID EVRARD ESQUIRE
\*ARON J BEATTY ESQUIRE
OFFICE OF CONSUMER ADVOCATE

5TH FLOOR FORUM PLACE

555 WALNUT STREET

HARRISBURG PA 17101-1923

717.783.5048
devrard@paoca.org
*ACCEPTS E-SERVICE
Intervener - Office of Consumer Advocate*

ROBERT W BALLENGER ESQUIRE
JOSIE B H PICKENS ESQUIRE
JOLINE PRICE ESQUIRE
KINTESHIA SCOTT ESQUIRE

COMMUNITY LEGAL SERVICES INC

1424 CHESTNUT STREET

PHILADELPHIA PA 19102

215.981.3700

**kscott@cls.org**

*ACCEPTS E-SERVICE
Representing “TURN et al*”

ERIN FURE ESQUIRE
DANIEL G ASMUS ESQUIRE
OFFICE OF SMALL BUSINESS ADVOCATE

FORUM PLACE

555 WALNUT STREET 1ST FLOOR

HARRISBURG PA 17101

717.783.2525
efure@pa.gov
dasmus@pa.gov
*Intervener - Office of Small Business Advocate*

GREGORY PETERSON ESQUIRE
KEVIN C BLAKE ESQUIRE
THOMAS F PUCHNER ESQUIRE
PHILLIPS LYTLE LLP

201 WEST THIRD STREET SUITE 205

JAMESTOWN NY 14701
716.664.3906
*ACCEPTS E-SERVICE*gpeterson@phillipslytle.com
*Representing “Statewise*”

1. PECO’s requirement under Pennsylvania’s Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1643.1 *et seq.* (the “AEPS Act”). [↑](#footnote-ref-1)
2. In particular, PECO-ESC-1-2 seeks aggregated data for ESC members regarding their total sales (in MWh) and sales revenue in PECO’s service territory over the last five years for the **same customer groups** for which PECO proposes to procure default generation service in DSP V. See PECO Motion to Compel at 6. [↑](#footnote-ref-2)