**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison Company, : P-2017-2637855

Pennsylvania Electric Company, Pennsylvania: P-2017-2637857

Power Company and West Penn Power Company :P-2017-2637858

for approval of their Default Service Programs : P-2017-2637866

**PREHEARING ORDER**

On December 11, 2017, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, the Companies) filed a joint petition for the approval of default service and procurement programs covering a four-year period from June 1, 2019 through May 31, 2023. By hearing notice dated December 21, 2017, the petitions were assigned to me and a telephonic prehearing conference was scheduled for January 17, 2018 at 1:30 p.m. Notice of the petitions and the prehearing conference was also published in the Pennsylvania Bulletin on December 23, 2017.[[1]](#footnote-1)

PA PUC Bureau of Investigation & Enforcement (BIE), Office Of Consumer Advocate (OCA) and Office of Small Business Advocate (OSBA) each filed interventions. Petitions to intervene were also filed by Calpine Energy Solutions, LLC, Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), Constellation NewEnergy, Inc. and Exelon Generation Company, LLC, Met-Ed Industrial Users Group (MEIUG), Penelec Industrial Customer Alliance (PICA), West Penn Power Industrial Intervenors (WPPII)[[2]](#footnote-2), NextEra Energy Marketing, LLC, Pennsylvania State University (PSU), Retail Energy Supply Association (RESA), and Respond Power LLC. On January 8, 2018, Kenneth C. Springirth, a ratepayer, filed a formal complaint.[[3]](#footnote-3)

A prehearing conference was held on Wednesday, January 17, 2018. Counsel for the Companies, the statutory parties, and the interveners attended the conference. Mr. Springirth also appeared. Christine Rush of State Representative Pat Harkins’ office, along with Father Jerry Priscaro and John Shubert appeared and participated in the discussion regarding public input hearings. Sean Ajazi of Progressive Energy Group also called in to observe the proceedings. This Order memorializes the matters decided and agreed upon by the parties attending the conference.

**Consolidation**

The Companies requested that all of the default service petitions be consolidated. No party objected and consolidation was granted. Additionally, the complaint of Mr. Springirth was also consolidated. In the event that additional formal complaints are filed by ratepayers, those complaints will automatically be consolidated.

**Petitions to Intervene**

Petitions to Intervene filed by Calpine Energy Solutions, LLC, Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), Constellation NewEnergy, Inc. and Exelon Generation Company, LLC, Met-Ed Industrial Users Group (MEIUG), Penelec Industrial Customer Alliance (PICA), West Penn Power Industrial Intervenors (WPPII), NextEra Energy Marketing, LLC, Pennsylvania State University (PSU), Retail Energy Supply Association (RESA), and Respond Power LLC were granted.

**Parties**

The parties are directed to monitor filings with the Commission’s Secretary’s Bureau and advise the undersigned of any additional formal complaints filed after the date of this Order.

**Litigation Schedule**

The parties agree upon the following litigation schedule:

|  |  |
| --- | --- |
| Date | Event |
| December 11, 2017 | Company Submission of Filing & Testimony |
| January 17, 2018 | Prehearing Conference |
| February 22, 2018 | Written Direct Testimony of All Other Parties Due In-Hand |
| March 22, 2018 | Written Rebuttal Testimony Due In-Hand |
| April 4, 2018 | Written Surrebuttal Testimony Due In-Hand |
| April 6, 2018 | Rejoinder Outline Due In-Hand |
| April 9, 2018 | Witness Schedule Due In-Hand |
| April 10-11, 2018 | Technical Evidentiary Hearings and oral rejoinder in Harrisburg |
| May 1, 2018 | Main Briefs Due In-Hand |
| May 15, 2018 | Reply Briefs Due In-Hand or Submission of Joint Settlement Petition Executed By Representatives of All Parties, Together With All Parties’ Statements In Support of Settlement |

The parties are reminded of the Commission’s requirements for the preparation and filing of written testimony. 52 Pa.Code § 5.412. Written testimony must be accompanied by all exhibits to which it relates. Technical terms and concepts are to be clearly defined and explained in the testimonies and briefs. **The parties are to agree on a list of common acronyms and use them consistently in all written testimony and briefs.**

Parties serving prepared testimony in proceedings pending before the Commission pursuant to 52 Pa.Code § 5.412(f) shall be required, within thirty (30) days after the final hearing in an adjudicatory proceeding to either eFile with or provide to the Secretary’s Bureau a Compact Disc (CD) containing all testimony furnished to the court reporter during the proceeding.

The above-stated dates are in-hand dates for service on the parties and the Presiding Administrative Law Judge (ALJ). The parties and the Presiding ALJ agree to accept email transmission of such material, so long as the subject email is received by 4:30 p.m. on the date due and provided the email is followed the next business day by sending a hard copy of the same material via first-class mail postage prepaid to the parties designated on the Full Service List. The email address of the Presiding ALJ is: [malong@pa.gov](mailto:malong@pa.gov). The Presiding ALJ will not accept facsimile transmissions greater than ten pages in length without prior authorization. If in doubt, please call the office (412‑565-3550).

Hearings will begin promptly on each day. The parties must confer before commencement of the hearings to schedule their witnesses so as to avoid “holes” or “dead time” during the hearings. In the event that a partial settlement is achieved the parties should be prepared to proceed on the first scheduled day of hearing to present evidence on the non-resolved issues.

**Service of Documents**

The parties are excused from serving Mr. Springirth with copies of discovery and written testimony. The parties shall serve Mr. Springirth with copies of briefs if any are filed. In the event that a settlement is reached, the Companies shall serve Mr. Springirth with the petition for settlement and statements in support.

**Public Input Hearings**

A spirited discussion was held regarding public input hearings in Erie, Pennsylvania. Substantial public interest was identified by OCA as well as by Ms. Rush on behalf of Representative Harkins. An in-person public input hearing will be held on Tuesday, March 13, 2018 at 1 p.m. and 6 p.m. A specific location will be identified at a later date.

**Issues**

In their respective prehearing memoranda, the parties identified various issues they may wish to pursue. The reader is directed to these documents to review a recitation of these issues. Additional issues may arise as the discovery process unfolds.

**Protective Order**

The Companies requested a protective order to which no party objected. The order was provisionally granted and will be formalized in a separate written order.

**Discovery**

The parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa.Code § 5.322. If this process fails, the parties have recourse to the Commission’s procedures for formal discovery, as herein modified. 52 Pa.Code §§ 5.321, *et* *seq*. The parties must not send the Presiding ALJ discovery material or cover letters, unless attached to a motion to compel. **All motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally.** If a motion to compel fails to contain such certification, the Presiding ALJ will contact the parties and direct them to pursue informal discovery.

The parties agreed to the following modifications to the Commission’s procedures for formal discovery:

a. Answers to written interrogatories propounded in preparation of direct and rebuttal testimony shall be served in-hand within ten (10) days of service.

b. Objections to interrogatories shall be communicated orally within three (3) days of service of the interrogatories; unresolved objections shall be served to the Presiding ALJ in writing within five (5) days of service of the interrogatories.

c. Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) days of service of the written objections.

d. Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) days of service of such motions.

e. Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within ten (10) days.

f. Requests for admissions will be deemed admitted unless answered within ten (10) calendar days or objected to within five (5) days of service.

g. Discovery requests served after 4:30 p.m. Monday through Thursday or after 12:00 p.m. on a Friday or the day preceding a holiday shall be deemed to have been served on the next business day.

**Settlement and Stipulations**

The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa.Code § 5.231(a). The parties are strongly urged to seriously explore this possibility. The parties shall notify the presiding ALJ on or before **4:00 p.m., on April 6, 2018,** if they have resolved their dispute.

Submission of a Joint Settlement Petition executed by representatives of all parties, together with all parties’ Statements In Support of Settlement, must be filed with the Secretary for the Commission and received in-hand by the Presiding ALJ no later than the close of business on **May 15, 2018**.

If settlement is not feasible, the parties are encouraged to stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234. All stipulations entered into by the parties must be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.

**Cross-Examination**

Friendly cross-examination or cumulative cross-examination during hearings will not be permitted. 52 Pa.Code §§ 5.76 & 5.243.

**Briefs**

The parties must comply with 52 Pa.Code §§ 5.501, *et* *seq*., regarding the preparation and filing of briefs. Page limitations on briefs will be discussed on or before the last day of hearings. Where possible, the parties shall submit to the Presiding ALJ **one** hard copy of their briefs and one copy by email. If a party cannot provide a copy by email or on computer disk, it must submit two hard copies of briefs. The electronic version of a brief must be prepared on an IBM compatible system in *Microsoft Office Word 2016* format or in an earlier version of this software application. If in doubt, please call the office of the Presiding ALJ for clarification.

**Modification**

Any of the provisions of this Prehearing Order may be modified upon motion and good cause shown by any party in interest.

Date: January 19, 2018 /s/

Mary D. Long

Administrative Law Judge

**P-2017-2637855, P-2017-2637857, P-2017-2637858, P-2017-2637866 Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for approval of their Default Service Programs**

*Revised 1/19/18*

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1. 47 Pa.B. 7809-7811 (December 23, 2017). [↑](#footnote-ref-1)
2. MEIUG, PICA and WPPII are hereafter collectively referenced as the “Industrials.” [↑](#footnote-ref-2)
3. C-2018-2641907. [↑](#footnote-ref-3)