**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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| Commissioners Present:  Gladys Brown Dutrieuille, Chairman  David W. Sweet, Vice Chairman  Andrew G. Place  John F. Coleman, Jr. |  |
| Petition of PPL Electric Utilities Corporation for Approval of Tariff Modifications and Waivers of Regulations Necessary to Implement its Distributed Energy Resources Management Plan | P-2019-3010128 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are three Petitions for Interlocutory Review and Answer to Material Question (Petitions) filed on September 20, 2019, by the Office of Consumer Advocate (OCA), the Natural Resources Defense Council (NRDC), and Sunrun, Inc. (SUNRUN) (collectively Petitioners) in the above-captioned proceeding.[[1]](#footnote-2) The Petitioners each filed Briefs in Support of their respective Petitions on

September 30, 2019. On that same date, PPL Electric Utilities Corporation (PPL) filed a Brief in Opposition to the Petitions.

The Petitioners seek interlocutory review and an answer in the affirmative by the Commission to the following Material Questions:

1. Does PPL’s Petition implicate technical and public policy issues of statewide concern?

1. Should PPL’s Petition be denied in favor of addressing such issues on a statewide basis at a time deemed appropriate by the Commission?
2. Should the Commission initiate a statewide stakeholder process allowing for Commonwealth wide input on whether current circumstances warrant addressing any or all of the issues raised in PPL’s Petition at the present time?

OCA Pet. at 1; NRDC Pet. at 2; SUNRUN Pet. at 3, 5 and 7.

For the reasons discussed more fully below, we determine that the Petitions are improper as they are premature, and we will return the matter to the presiding ALJ for such further proceedings as may be deemed necessary for the creation of a full and complete record upon which the Commission may consider the matter, consistent with this Opinion and Order. 52 Pa. Code § 5.303(a)(2) (pertaining to Commission action on petition for interlocutory review and answer).[[2]](#footnote-3)

**I. History of the Proceeding**

On May 24, 2019, PPL filed a Petition seeking Commission approval of modifications to the net metering and interconnection provisions in PPL’s Distributed Energy Resources Management Plan (DER Management Plan) and to waive nine of the Commission’s regulations implementing the Alternative Energy Portfolio Standards Act (AEPS Act). *See* PPLPet. at 1, 22; *See also* 52 Pa. Code. §§ 75.1 – 75.72. Specifically, PPL seeks to modify its DER Management Plan to, *inter alia*, require customers seeking to interconnect new distributed energy resources (DERs) to install PPL-approved “smart inverters.”[[3]](#footnote-4) The proposed “smart inverter” technology[[4]](#footnote-5) would include a device which enables PPL’s real-time monitoring and control of the customers’ DER deployments on PPL’s distribution system. The technology PPL proposes to require of customers meets the Institute of Electrical and Electronics Engineers Standards Association (IEEE) Standard 1547-2018 and the *yet-to be-finalized* Underwriters Laboratories (UL) Standard 1741. PPL Pet. at 2 (emphasis added).

On July 30, 2019, NRDC filed a Motion to Intervene and an Answer to PPL’s Petition.[[5]](#footnote-6) On that date, Motions for Intervention and Answers were likewise filed by SUNRUN and the OCA. The Intervenors each answered in opposition to PPL’s Petition.

On September 2, 2019, an additional Motion to Intervene was filed by Sustainable Energy Fund (SEF), which also raises opposition to PPL’s Petition.

On September 11, 2019, a Prehearing Conference was held where the Presiding Officer, Administrative Law Judge (ALJ) Emily I. DeVoe, granted leave for the parties to file a Petition for Interlocutory Review pursuant to Section 5.302 of the Commission’s regulations, 52 Pa. Code § 5.302, by September 20, 2019.

On September 20, 2019, in accordance with the Presiding Officer’s directions, SUNRUN, NRDC, and the OCA each filed their Petitions for Interlocutory Review and Answer to Material Questions for consideration by this Commission.

**III. Discussion**

**A. Legal Standards**

As a preliminary matter, we note that any issue we do not specifically delineate shall be deemed to have been duly considered and denied without further 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);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

Generally, a party seeking interlocutory review of an issue which arises or may arise in a proceeding may file a Petition in accordance with Section 5.302 of Commission regulations, 52 Pa. Code § 5.302[[6]](#footnote-7) (pertaining to petitions for interlocutory review and answer to material question), at any time, or within fifteen days of the entry of an order at issue, per Section 5.572(c) of Commission regulations, 52 Pa. Code

§ 5.572 (c) (pertaining to petitions for relief).

The general rule is that petitions for interlocutory review are disfavored and allowed only in the most extraordinary circumstances. *Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021 (Order entered October 23, 2009) at 3.

The requisite elements for granting a petition for interlocutory review and answer to material question raised by a party, are set forth at Section 5.302(a). In such case, the petitioner must provide a statement of “the question to be answered and the *compelling reasons* why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceedings.” 52 Pa. Code § 5.302(a) (emphasis added).

Under case law construing Section 5.302(a), the “compelling reasons” for interlocutory review are the reasons establishing such review is *necessary* to either prevent substantial prejudice or expedite the conduct of the proceeding. In other words, a petition under Section 5.302(a) must allege compelling reasons why any alleged prejudice flowing therefrom could not be rectified during the normal Commission review process. *Joint Application of Bell Atlantic Corp. and GTE Corp.*, Docket No. A‑310200F0002, *et al.* (Order entered June 14, 1999); *Pa. PUC v. Frontier Communications of Pa. Inc.*, Docket No. R‑00984411 (Order entered February 11, 1999); *In re: Knights Limousine Service, Inc*., 59 Pa. P.U.C. 538 (1985).

Therefore, for a Section 5.302(a) petition for interlocutory review to be properly before the Commission for consideration, the pertinent consideration is whether the asserted reasons establish that interlocutory review is *necessary* under the circumstances. Based on the Commission’s determination whether interlocutory review is necessary to either prevent the alleged substantial prejudice or expedite the proceedings, the Commission will then either: (1) continue, revoke or grant a stay of the proceedings, if necessary; (2) determine that the petition was improper and return the matter to the presiding officer; (3) decline to answer the question; or (4) answer the question. 52 Pa. Code § 5.303(a)(1)-(4).

In a petition for interlocutory review involving the scope and admissibility of evidence in a proceeding, the Commission will consider the presiding ALJ’s authority to oversee and rule on the scope of and admissibility of evidence in a proceeding, as set forth in statute at Section 331(d)(3) of the Public Utility Code, 66 Pa. C.S. § 331(d)(3) (pertaining to authority of the presiding officer), and Commission regulations, including: at Sections 5.483 (pertaining to authority of presiding officer); 5.403 (pertaining to control of receipt of evidence); 5.103 (pertaining to authority to rule on motions); 5.222 (pertaining to prehearing conference in nonrate proceedings to oversee evidentiary matters for orderly conduct and disposition of the proceeding and furtherance of justice); and 5.223 (pertaining to authority of presiding officer at conferences). 52 Pa. Code §§ 5.483, 5.403, 5.103, 5.222, and 5.223.

As noted, generally, petitions for interlocutory review regarding evidentiary matters within the ALJ’s authority are not favored. The preferred approach is to permit proceedings to move forward in the normal course to provide all parties, the presiding officer, and the Commission, with a full opportunity to develop the record, brief issues, and present arguments at each stage. *See*, *Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021 (Order entered October 23, 2009) at 3.

**B. Positions of the Parties**

**1. The Petitioners**

As noted previously, the Petitioners seek interlocutory review and an answer in the affirmative by the Commission to the following Material Questions:

1. Does PPL’s Petition implicate technical and public policy issues of statewide concern?

2. Should PPL’s Petition be denied in favor of addressing such issues on a statewide basis at a time deemed appropriate by the Commission?

3. Should the Commission initiate a statewide stakeholder process allowing for Commonwealth wide input on whether current circumstances warrant addressing any or all of the issues raised in PPL’s Petition at the present time?

OCA Pet. at 1; NRDC Pet. at 2; SUNRUN Pet. at 3, 5 and 7. Notably, OCA, NRDC and SUNRUN do not challenge an order or finding of the ALJ with the review of these questions. Rather, the Petitioners assert that PPL’s Petition should be either denied as premature, or in the alternative, considered in the context of a statewide proceeding. *See*, Pet. of NRDC at 1-2.

First, the Petitioners reject the proposition that PPL’s request for waiver of the AEPS regulations is necessary and in the public interest. The Petitioners argue that PPL’s “predictions” of the future increase in requests for interconnection are speculative and, therefore, cannot establish a present need for waiver of the Commission Regulations implementing the AEPS Act specifically establishing the *statewide technical standard* applicable to interconnection at 52 Pa. Code § 75.35. PPL’s waiver seeks authority to require customers to install “smart inverters” meeting technical standards which are not approved IEEE 1547-2018 and U.L. 1741 standards (as amended and modified). *Id*. The Petitioners note that the technology PPL seeks to require is not yet approved in states with electric distribution systems which experience a far greater level of alternative energy interconnection. Pet. of NRDC (Exhibit A, Affidavit of Richard O’Connell at 4). The Petitioners argue that PPL cannot assert a present need for waiver of the existing technical standards based on a *prediction* of future increased demand for interconnection and should be denied.

The Petitioners’ Material Questions assert that the proper scope of the proceeding is statewide. The Petitioners assert PPL’s Petition for waiver of AEPS regulations has such statewide implications for the Commission’s implementation of the AEPS Act, that consideration of PPL’s Petition should be deferred until the Commission makes the necessary state-wide policy determination whether the public interest in a statewide technical standard should yield to PPL’s interest in requiring customer generators to install inverter equipment which does not meet the approved technical standards established by Commission Regulation. *See*, 52 Pa. Code § 75.35. The Petitioners note that the Commission’s adoption of a statewide technical standard for interconnection at § 75.35, reflects the Commission’s policy determination that it was in the public interest in promoting alternative energy to ensure a predictable and consistent statewide technical standard upon which to plan and evaluate interconnection between small generator facilities and the distribution system, for both customers and alternative energy developers. Pet. of NRDC at 7-10.

In this case, the Petitioners maintain, due to PPLs dominant statewide footprint, PPL’s request to diverge from the statewide technical standard, if granted, as a practical matter, will defeat the public interest which the Commission intended to protect by adoption of the statewide technical standard for interconnection. The Petitioners assert that the Commission’s interlocutory review and Answers in the Affirmative to the Material Questions are necessary to prevent substantial prejudice to the Petitioners and harm to the public interest if the matter were to proceed as PPL’s individual administrative proceeding. *Id*. at 5-6.

**2. PPL**

PPL opposes the Petitions and argues that the Material Questions should be answered in the negative. PPL argues that the requirement of installing the smart inverters, which requires waiver of the Commission’s AEPS Regulation establishing the statewide standard for inverter equipment at 52 Pa. Code § 75.35, is necessary and in the public interest based upon PPL’s prediction of rapid expansion in DER development in PPL’s service territory in Pennsylvania over the next several years. PPL asserts that PPL’s control over the type and operation of the customer’s DER equipment is vital and urgently needed to allow PPL to ensure power quality, reliability and safety. *See* PPL Brief in Opposition at 5-10, 17-21.

With respect to interlocutory review, PPL asserts that the Petitioners fail to meet the standard for granting interlocutory review. PPL maintains the Petitioners’ arguments regarding the appropriate scope of the proceeding are fact-based and require hearings to establish evidence of record upon which the Commission may review those questions. PPL further asserts that PPL’s basis for seeking waiver of Commission regulations is also a fact-based question, and therefore, the Petition itself must be reviewed based upon the evidence PPL is prepared to offer. PPL Brief in Opposition (Appendix A, Affidavit of Dr. Karen Miu at 1-5).

PPL maintains that granting interlocutory review is not warranted, where the Petitioners have failed to assert any matter which cannot be rectified in the normal course of this administrative proceeding. Therefore, PPL asserts the Petitions should be denied.

**C. Disposition**

Based on our review of the instant Petitions, the Positions of the Parties, and the applicable law, we find that the record before us is insufficient to support interlocutory review. Without an adequate record upon which to conduct an informed review of the technical and policy considerations raised by the material questions regarding the Commission’s oversight and implementation of the AEPS Act on a statewide basis, and specifically with respect to use of the “smart inverter” technology as proposed by PPL, we find that the Petitions are improperly before us and return the matter to the presiding ALJ.

The Petitions for Interlocutory Review related to PPL’s request to require advanced “smart inverter” technology, which includes a device that enables PPL’s real-time monitoring and control of the customers’ DER deployments on PPL’s distribution system, requires a record addressing the potential impact to the statewide goals intended under the provisions of the AEPS Act and regulations, if the Commission approves PPL’s request.

We also note that interlocutory review is disfavored, particularly where the Material Questions pertain to matters within the presiding ALJ’s authority, including scope of the proceedings. In this case, the Petitioner’s Material Questions directly relate to the proper scope of the proceeding, which the Petitioners argue must be a statewide scope rather than utility-by-utility, to properly consider whether PPL, or any utility, should be granted a waiver of the AEPS regulations that establish the statewide technical standard for inverter technology.

Our analysis turns on whether the Petitions raise compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceedings. 52 Pa. Code § 5.302(a). In other words, there must be allegations of why the alleged error could not be rectified during the normal course of the Commission review process. Once these allegations are demonstrated, the Commission may take one of four actions: (l) continue, revoke or grant a stay of the proceedings, if necessary; (2) determine that the petition was improper and return the matter to the presiding officer; (3) decline to answer the question; or (4) answer the question.[[7]](#footnote-8)

In this case, the filings do not allege an error or other oversight that could not be rectified during the normal review process. Specifically, the record before us is limited to the parties’ pleadings and the transcript of the pre-hearing conference held by the presiding ALJ. Thus, the record has not been sufficiently developed for our consideration of the posed material questions. Based on the lack of a fully developed record on whether the scope of this proceeding should be considered on a utility-by-utility basis or on a statewide basis, we shall return the matter to the OALJ for the development of the record and determination of the scope of the proceeding in order to review PPL’s request for authority to require customers seeking interconnection under the AEPS Act to install inverter equipment which does not comply with the technical standards authorized by Commission regulations at 52 Pa. Code § 75.35.

In doing so, we recognize the important statewide policy objectives underpinning the AEPS Act to promote alternative energy resources in the Commonwealth which may be impacted by the grant of PPL’s waiver request. These policy considerations included the public interest in the promotion of alternative energy resources by setting a statewide technical standard applicable to interconnection, including the inverter equipment to be required for customers seeking interconnection with a distribution system.

We further recognize that PPL, as a petitioner seeking waiver of Commission regulations, is entitled to the opportunity to present evidence in support of the petition and establish a record to show PPL’s waiver from the statewide technical standards for inverter technology is necessary and in the public interest. PPL has asserted the need for present action to be adequately prepared for the anticipated future increase in interconnection requests. PPL is entitled to establish a full record to articulate the important countervailing public interest served by granting PPL’s request for waiver.

Finally, we recognize that waiver of our AEPS regulations regarding the statewide technical standard applicable to inverter equipment requires review of subject matter of a highly technical nature under the AEPS Act. Therefore, it may be advisable, where relevant, to utilize available Commission resources to assist with the policy and technical considerations in the review process.

**IV. Conclusion**

Based on our review of the Petition, the positions of the Parties, and the applicable law, we find that the Petitions are improperly before us as premature and return this matter to the presiding ALJ consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

l. That the Petitions for Interlocutory Review and Answer to Material Question (Petitions) filed by the Office of Consumer Advocate, the Natural Resources Defense Council, and Sunrun, Inc. on September 20, 2019, are improperly before the Commission, as premature, and shall be returned to the presiding Administrative Law Judge, consistent with this Opinion and Order.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ENTERED: October 17, 2019

1. Procedurally, the material questions are asserted by Petitioners pursuant to a party’s right to seek interlocutory review and answer to a material question, under Section 5.302 of Commission regulations, 52 Pa. Code § 5.302. [↑](#footnote-ref-2)
2. We note that interlocutory review of an ALJ’s determination of the scope of the proceedings evidentiary ruling is generally disfavored and typically would not be warranted, however, under the unique circumstances of this case, involving the implementation of the Alternative Energy Portfolio Standards Act (AEPS Act), we find that review is warranted in the interest of establishing a full and complete record upon which the Commission may review the question of the appropriate scope of the proceedings, given the potential statewide implications of PPL’s application for implementation of the AEPS Act. [↑](#footnote-ref-3)
3. In this Petition, a “smart inverter” means “an inverter that performs functions that, when activated, can autonomously contribute to grid support during excursions from normal operating voltage and frequency system conditions by providing: dynamic reactive/real power support, voltage and frequency ride-through, ramp rate controls, communication systems with ability to accept external commands and other functions.” Petition, p. 14, FN 20 citing PG&E Rule 21 Interconnection Tariff, *available at* <http://www.cpuc.ca.gov/General.aspx?id=5071>. [↑](#footnote-ref-4)
4. PPL proposes requiring customers seeking interconnection with PPL’s distribution system to install advanced technology equipment known as “smart inverters” which are not compliant with the current Commission-approved statewide technical standards, at 52 Pa. Code § 75.35. Instead PPL proposes requiring inverters which are compliant with Institute of Electrical and Electronic Engineers (IEEE) Standard 1547‑2018 and the *not yet approved* standard of the Underwriters Laboratories (UL) Standard 1741 certified to IEEE Standard 1547-2018. [↑](#footnote-ref-5)
5. On July 30, 2019, comments were filed by seven non-intervenors in support of the NRDC’s position. *See* Docket No. P-2019-3010128, Trinity Solar’s Comments in Support of Answer Filed By NRDC (July 30, 2019); GridLab’s Comments in Support of Answer Filed By NRDC (July 30, 2019); SUNWPA’s Comments in Support of Answer Filed By NRDC (July 30, 2019); Energy Independent Solutions, LLC’s Comments in Support of Answer Filed By NRDC (July 30, 2019); Interstate Renewable Energy Councils’ Comments in Support of Answer Filed By NRDC (July 30, 2019); Pennsylvania Solar Energy Industries Association’s Comments in Support of Answer Filed By NRDC (July 30, 2019); ExactSolar’s Comments in Support of Answer Filed By NRDC (July 30, 2019). [↑](#footnote-ref-6)
6. **§ 5.302. Petition for interlocutory Commission review and answer to a material question.**

   (a) During the course of a proceeding, a party may file a *timely* petition directed to the Commission requesting review and answer to a material question which has arisen or is likely to arise. The petition must be in writing with copies served on all parties and the presiding officer and state, in not more than three pages, the question to be answered and the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.

   (Emphasis added). [↑](#footnote-ref-7)
7. 52 Pa. Code § 5.303(a)(1)-(4). [↑](#footnote-ref-8)