

November 12, 2019

VIA E-MAIL & REGULAR MAIL

Honorable Mary D. Long
Administrative Law Judge
Pennsylvania Public Utility Commission
301 Fifth Avenue, Suite 220
Pittsburgh, PA 15222

Re: Docket No. P-2019-3010128, Petition of PPL Electric Utilities Corporation for Approval of Tariff Modifications and Waivers of Regulations Necessary to Implement its Distributed Energy Resources Management Plan

Judge Long:

Sunrun Inc. (“Sunrun”) hereby submits this letter in reply to the letter submitted by PPL Electric Utilities Corporation (“PPL”) on November 7, 2019 (“PPL Letter”) in response to the proposed litigation schedules submitted by Sunrun and the Natural Resources Defense Council (“NRDC”).

Sunrun and NRDC submitted the following proposed litigation schedule on November 6, 2019:

Phase I: Scope of Proceeding

November 27, 2019 – End of Discovery Period
December 11, 2019 – Responses to Discovery
December 20, 2019 – Statements of Position / Briefs
January 8, 2020 – Reply Statements of Position / Briefs
January 22, 2020 – Oral Argument
February 12, 2020 – OALJ Ruling

Phase 2: Merits

To be determined if the Phase I Ruling sets one or more issues for determination through the standard administrative litigation process.

Sunrun and NRDC shared with the parties, including PPL, their proposed litigation schedule through informal discussions on November 6, 2019 and invited the parties to raise any comments or concerns. While PPL’s proposed schedule sets forth its position on how the issues raised in its Petition should proceed, PPL did not raise any concerns, including those described in the PPL Letter, in the informal discussion process. Sunrun submits that further discussion of the parties’ proposed litigation schedules should occur at a prehearing conference. Notwithstanding, Sunrun is compelled to reply at this juncture to the unfounded assertions in the PPL Letter.

PPL incorrectly asserts that Sunrun's proposed schedule "contravenes the [Commission's] Order denying NRDC's and Sunrun's Petitions for Interlocutory Review, is inconsistent with Commission practice and procedure, and will result in a substantial waste of time and resources" (PPL Letter at 2). The Commission's October 17, 2019 Opinion and Order ("Opinion and Order") explicitly directs that "[b]ased 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," the matter shall return "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" (Opinion and Order at 12). The Opinion and Order is clear: the Commission declined to rule on the Petitions for Interlocutory review without a record and determination from the OALJ on the question of whether PPL's Petition should proceed on a statewide basis or a utility-by-utility basis through the standard administrative litigation process. Sunrun and NRDC's proposed schedule allows for this question to be answered in the first instance, as directed by the Opinion and Order.

PPL's assertion that Sunrun and NRDC's proposed schedule would result in a "substantial waste of time and resources" is unfounded. Adjudicating all the issues raised in PPL's Petition through the administrative litigation process prior to a determination on the proper scope of the proceeding—as PPL proposes—would require the parties to address the merits of each issue through a lengthy and costly standard administrative litigation process. Critically, proceeding in this manner would leave to the end of such process the determination on the threshold question of whether all or some of the issues are more appropriately addressed through a statewide proceeding. Adopting Sunrun and NRDC's proposed schedule provides the opportunity to answer foundational questions regarding the appropriate scope of the proceeding and then, if necessary, addressing the merits of any issues set for determination through the standard administrative litigation process. Proceeding in this manner would ensure an administratively efficient process that would conserve time and resources of the parties and the Commission.

PPL also accuses Sunrun and NRDC of proposing a litigation schedule that "only serves their presumed goal of unnecessarily delaying this proceeding," which is similarly unfounded (PPL Letter at 2). As described in detail in Sunrun's prior pleadings, Sunrun has proposed a process to address the issues raised in PPL's Petition in a manner that would *expedite* the conduct of this proceeding and ensure a fair and efficient process for all stakeholders (*see, e.g.*, Brief of Sunrun Inc. in Support of Petitions for Interlocutory Commission Review, Sept. 30, 2019 at pp. 9-11).

PPL further asserts that "nothing in [Sunrun and NRDC's] proposed litigation schedule would result in an evidentiary record" (PPL Letter at 2). Sunrun and NRDC's proposed schedule provides the opportunity to establish a record upon which the assigned ALJ can issue a ruling on the appropriate scope of the proceeding, as directed by the Opinion and Order. Implicit in Sunrun and NRDC's proposed schedule is the opportunity for parties to submit affidavits, stipulations of fact, and such other mechanisms as may be appropriate to establish a record, at the briefing and/or oral argument stage and as directed by the assigned ALJ in a prehearing order. As described in the Opinion and Order, it is within in the OALJ's scope of authority to, *inter alia*, control the receipt of

evidence, schedule and impose reasonable limitations on the scope of discovery, and otherwise regulate the conduct of the proceeding (Opinion and Order at 7 citing 66 Pa. C.S. § 331(d)(3), 52 Pa. Code §§ 5.483, 5.403, 5.103, 5.222, and 5.223). In keeping with this authority, the assigned ALJ may establish a procedural schedule necessary to carry out the directives of the Opinion and Order. Sunrun and NRDC's proposed schedule provides a framework and schedule for the assigned ALJ to make these determinations in keeping with the authority of the OALJ and the Opinion and Order's directive for the "development of the record and determination of the scope of the proceeding" (*Id.* at 12).

The two portions of the Opinion and Order cited by PPL to support its position—that "PPL 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" and "PPL is entitled to establish a full record to articulate the important countervailing public interest served by granting PPL's request for waiver"—ignore the Commission's directive for the assigned ALJ to make a threshold determination as to whether the scope of this proceeding should be considered on a utility-by-utility basis or on a statewide basis (Order at 12). Adopting PPL's interpretation of the Opinion and Order assumes a determination that all the issues raised in PPL's Petition will proceed pursuant to the standard administrative litigation process. Such a determination has not been made; rather, as the Opinion and Order clearly states: "[b]ased 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," the matter shall return "to the OALJ for the development of the record and determination of the scope of the proceeding" (*Id.*).

The proposed litigation schedule provided by Sunrun and NRDC provides a fair and efficient framework upon which the issues raised in PPL's Petition can be addressed and is in keeping with the October 17, 2019 Opinion and Order of the Commission. Sunrun welcomes, and hereby respectfully requests, the opportunity to discuss the parties' proposed litigation schedules at a prehearing conference to address questions or concerns from PPL, the intervenor parties, and the assigned ALJ with regard to the parties' proposed litigation schedules prior the issuance of a ruling establishing a procedural schedule.

Respectfully submitted this 12th day of November 2019.

/s/ James M. Van Nostrand
James M. Van Nostrand
Pennsylvania Bar # 327054
Keyes & Fox LLP
275 Orchard Drive
Pittsburgh, PA 15228
Phone: (304) 777-6050
E-mail: jvannostrand@keyesfox.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation :
for Approval of Tariff Modifications and :
Waivers of Regulations Necessary to : Docket No. P-2019-3010128
Implement its DER Management Plan :
:

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

VIA E-MAIL

Hon. Mary D. Long
Pennsylvania Pub. Util. Commission
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222
malong@pa.gov

Hard-copy also provided.

Kimberly A. Klock, Esquire
PPL Services Corporation
2 North Ninth Street
Allentown, PA 18101
kklock@pplweb.com
mlbartolomei@pplweb.com

Ed Merrick
Vice President, Regulatory Affairs
Trinity Solar
2211 Allenwood Road
Wall, NJ 07719
ed.merrick@trinity-solar.com

Devin T. Ryan, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
dryan@postschell.com
jlangan@postschell.com

For PPL Electric Utilities Corp.

Phillip D. Demanchick, Esquire
Darryl A. Lawrence, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101
PDemanchick@paoca.org
DLawrence@paoca.org

Sharon Pillar
President
SUNWPA
1435 Bedford Ave., Suite 140
Pittsburgh, PA 15143
pillarsharon@gmail.com

Joseph Morinville
Energy Independent Solutions, LLC
2121 Noblestown Road, Ste. 222
Pittsburgh, PA 15205
joe@eissolar.com

Mark Bortman
Exact Solar
1655 Fairfield Road
Yardley, PA 19067
mark@exactsolar.com

Mark Szybist
Natural Resources Defense Counsel
1152 15th Street NW, Ste. 300
Washington, DC 20005
mszybist@nrdc.org

Andrew J. Karas
Fair Shake Environmental Legal Services
647 E Market Street
Akron, OH 44304
akaras@fairshake-els.org

Ron Celentano
Pennsylvania SEIA
7821 Flourtown Ave.
Wyndmoor, PA 19038
CelentanoR@aol.com

Sara Baldwin
IREC
125 Wolf Road, Suite 207
Albany, NY 12205
sarab@irecusa.org

Kenneth L Mickens, Esquire
316 Yorkshire Drive
Harrisburg, PA 17111-6933
kmickens11@verizon.net

For Sustainable Energy Fund

VIA FIRST CLASS MAIL, POSTAGE PREPAID

David B. MacGregor, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601

For PPL Electric Utilities Corp.

David T. Evrard, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101

John Costlow
President
Sustainable Energy Fund
4110 Independence Drive, Suite 100
Schnecksville, PA 18078

Richard A. Kanaskie, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

Ric O'Connell
GridLab
20120 University Ave.
Berkeley, CA 94704

Michael Shafer
Assistant General Counsel
PPL Electric Utilities Corporation
2 North Ninth Street
Allentown, PA 18101

Emily Collins

Fair Shake Environmental Legal Services
647 E Market Street
Akron, OH 44304

Dated this 12th day of November, 2019.

/s/ Blake Elder

Keyes & Fox LLP

1155 Kildaire Farm Rd., Suite 202-203

Cary, NC 27511

919-825-3339

belder@keyesfox.com