**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Interstate Gas Supply, Inc., *et al*. : C-2019-3013805

: C-2019-3013806

v. : C-2019-3013807

: C-2019-3013808

Metropolitan Edison Company, :

Pennsylvania Electric Company, :

Pennsylvania Power Company and :

West Penn Power Company :

**SCHEDULING ORDER**

On October 25, 2019, Interstate Gas Supply, Inc. d/b/a IGS Energy, Direct Energy Services LLC and Shipley Choice, LLC d/b/a Shipley Energy (collectively referred to as “the EGSs”) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively “the EDCs”). The Commission assigned the following four docket numbers, one for each respondent, to the complaint: C-2019-3013805, C-2019-3013806, C-2019-3013807 and C-2019-3013808.

In their complaint, the EGSs averred that the EDCs conduct of providing a billing service, known in the industry as “on-bill” billing, for non-commodity products and services that it provides for the benefit of its electric distribution customers, while refusing to provide on-bill billing for EGSs serving customers on its systems, violates Sections 1502 and 2804(6) of the Public Utility Code, as well as a Commission Opinion and Order in a recent similar case in the natural gas industry. The EGSs provided substantial argument and attachments to their complaint in support of their position and requested that the Commission find that the EDCs’ refusal to provide on-bill billing for EGSs operating in their system violates the Public Utility Code and, as a remedy, require the EDCs to provide a similar service to the EGSs operating on their systems.

On November 14, 2019, the EDCs filed an answer and new matter in response to the EGSs’ complaint. In their answer, the EDCs admitted or denied the various averments made by the EGSs in their complaint. In particular, the EDCs admitted that they offer non-commodity products and services to their customers but have not authorized the EGSs to bill for non-commodity products and services on the EDCs monthly electric service bills. In their new matter, which was accompanied by a notice to plead, the EDCs argued that the EGSs’ tariffs prohibit the relief requested in the formal complaint. The EDCs further argued that these tariffs were recently approved as part of their default service plan in 2018 which the EGSs’ were served a copy of. The EDCs also addressed other issues raised by the EGSs in their complaint and requested that the complaint be dismissed with prejudice.

On December 4, 2019, the EGSs filed an answer to the EDCs’ new matter. In their answer, the EGSs denied the EDCs’ claim to the extent they contend it is not appropriate or otherwise permissible to file a complaint regarding the legality of a service or tariff of a public utility. The EGSs also denied, among other things, the EDCs’ averment regarding their participation in the EDCs’ default service plans in 2018 and its impact on the complaint. The EGSs requested that their complaint be sustained and their relief requested granted.

On December 23, 2019, a prehearing conference notice was issued establishing a prehearing conference for this matter for Monday, February 3, 2020 at 10:00 a.m. in hearing room 5 of the Commonwealth Keystone Building in Harrisburg and assigning me as the presiding officer. On December 26, 2019, a prehearing order was issued that set forth various rules that will govern the hearing.

On December 30, 2019, the EGSs filed a motion to dismiss objections and compel responses to interrogatories and request for production of documents, set I numbers 1, 2, 5 and 6. On January 6, 2020, the EDCs filed an answer to the EGSs’ motion. The EGSs’ motion was granted via order dated January 15, 2020.

On January 24, 2020, the Retail Energy Supply Association (RESA) filed a petition to intervene into the proceeding.

The prehearing conference convened on February 3, 2020 as scheduled. Todd Stewart, Esquire, appeared on behalf of the EGSs; Teresa Harrold, Esquire, appeared on behalf of the EDCs; and Deanne O’Dell, Esquire, appeared on behalf of RESA. Each of these parties had previously filed a prehearing memorandum in response to the prehearing conference order. The purpose of this scheduling order is to memorialize the matters agreed upon at the prehearing conference.

As an initial matter, the petition to intervene filed by RESA was granted and the individual complaints filed by the EGSs were consolidated. The parties also agreed to the following litigation schedule:

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| Joint Complainant Direct Testimony | March 24, 2020 |
| Respondent Rebuttal Testimony | May 13, 2020 |
| Joint Complainant Surrebuttal Testimony | May 27, 2020 |
| Proposed Witness Order | June 8, 2020 |
| Hearing | June 30, 2020 |
| Main Briefs | August 18, 2020 |
| Reply Briefs | September 11, 2020 |

The evidentiary hearing will be held in Harrisburg and begin at 10:00 a.m.

A discussion was also held regarding the need to modify the Commission’s regulations regarding discovery and it was determined that no modifications to the Commissions discovery regulations would be made at this time.

Similarly, a discussion was held regarding the need for a protective order to govern the treatment of information alleged to be proprietary and it was determined that no protective order was needed at this time. To the extent that a need arises, the parties should attempt to submit a joint proposal for a protective order. In addition, the parties are reminded that the treatment of information alleged to be proprietary must be balanced against Commission regulations that also provide that the Commission’s records, including the record of this proceeding, may be accessed by the public. As a result, while the parties can exchange whatever information they allege to be proprietary amongst themselves, they are encouraged to minimize or eliminate submitting for admission into the record material that is marked as proprietary to ensure greatest public access to the record of this proceeding.

Finally, the parties were reminded that Commission policy promotes settlements. 52 Pa. Code §5.231(a). The parties are encouraged to commence settlement discussions as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary and the scheduled hearing will be cancelled. The parties are reminded, however, that decisions of the Commission must be supported by substantial evidence. 2 Pa. C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Any settlement submitted for approval must be supported by substantial evidence.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the petition to intervene filed by the Retail Energy Supply Association on January 24, 2020 is hereby granted.
2. That the formal complaints filed by Interstate Gas Supply, Inc. d/b/a IGS Energy, Direct Energy Services LLC and Shipley Choice, LLC d/b/a Shipley Energy filed against Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company at docket numbers C-2019-3013805, C-2019-3013806, C-2019-3013807 and C-2019-3013808 are hereby consolidated.
3. That the following schedule is adopted for this proceeding:

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| --- | --- |
| Joint Complainant Direct Testimony | March 24, 2020 |
| Respondent Rebuttal Testimony | May 13, 2020 |
| Joint Complainant Surrebuttal Testimony | May 27, 2020 |
| Proposed Witness Order | June 8, 2020 |
| Hearings | June 30, 2020 |
| Main Briefs | August 18, 2020 |
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1. That the parties shall receive all documents and shall copy all other parties on documents they file with the Commission or serve on the presiding officer. The parties are expected to conduct discovery, attend hearings, or present or cross-examine witnesses, as appropriate. The parties shall serve the documents listed above so that the documents are received in-hand by the parties and presiding officers no later than 4:30 p.m. on the dates listed. Parties may serve the documents listed above via e-mail to meet this requirement, with hard copy to follow by regular first class mail, so long as the electronic version is Microsoft Word compatible and no larger than 5 MB per email. Parties shall not file testimony with the Commission, but shall file a certificate of service.
2. That written testimony shall comply with the requirements of 52 Pa.Code §5.412 and shall be marked with numerical, sequential statement numbers. Parties serving pre-served testimony pursuant to 52 Pa.Code § 5.412(f) are required, within thirty (30) days after the final hearing, 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, consistent with the Commission’s Implementation Order, dated January 10, 2013, at Docket No. M-2012-2331973.
3. That all parties shall comply with the provisions of 52 Pa.Code §5.243(e) which prohibits the introduction of evidence during rebuttal which should have been included in the party’s case-in-chief or which substantially varies from the party’s case-in-chief, unless the party is introducing evidence in support of a proposed settlement.
4. That the parties shall conduct discovery pursuant to 52 Pa.Code §§5.321-5.373, as modified above. The parties are encouraged to cooperate and exchange information on an informal basis. The parties shall cooperate rather than engage in numerous or protracted discovery disagreements that require formal resolution. All motions to compel shall contain a certification by counsel setting forth the informal discovery undertaken and their efforts to resolve their discovery disputes informally. If a motion to compel does not contain this certification, the parties will be directed to pursue informal discovery. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa.Code §§5.361, 5.371-5.372.
5. That any evidentiary hearing will be held in Harrisburg and will commence at 10:00 a.m. unless changed by the presiding officer.
6. That the parties shall 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 administrative hearing resources. 52 Pa.Code §§5.232 and 5.234.
7. That any evidentiary hearing in this matter constitutes a formal legal proceeding and will be conducted in accordance with the Commission’s Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings.
8. That any provision of this order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa.Code §5.223(a).

Date: February 5, 2020 /s/

Joel H. Cheskis

Deputy Chief Administrative Law Judge

**C-2019-3013805, C-2019-3013806, C-2019-3013807 AND C-2019-3013808 - INTERSTATE GAS SUPPLY INC., ET AL v. METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY**

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