**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation :

for Approval of Its Default Service Plan : P-2020-3019356

For the Period June 1, 2021 Through :

May 31, 2025 :

**INTERIM ORDER**

On or about June 23, 2020, the Retail Energy Supply Association (RESA) petitioned for leave to withdraw as an Intervenor in the above-captioned proceeding. On June 24, 2020, Starion Energy PA, Inc. filed a petition to intervene as it had been a member of RESA and still wished to protect its interest in this case. No objections to either the petition for leave to withdraw or the petition to intervene were filed. Accordingly, RESA is deemed to have withdrawn as an Intervenor and Starion Energy PA, Inc. shall be granted Intervenor status.

On June 25, 2020, the EGS Parties[[1]](#footnote-1) served the direct testimony of their witness, Christopher H. Kallaher, who presented a review of whether PPL’s DSP V Plan is consistent with the development of the competitive retail market.

On June 30, 2020, OCA served Interrogatories, Set IV, on EGS Parties, which were timely objected to. On July 13, 2020 OCA filed a Motion to Compel responses to OCA Set IV, Nos. 3-5 and 13. The EGS Parties filed a Response in opposition to the Motion on July 20, 2020. No other party filed a Response either in support of or against the Motion to Compel. The Motion to Compel is ripe for a decision.

The standard for permissible discovery is set forth in Section 5.321 of the Commission’s regulations:

**§ 5.321. Scope.**

(c)  *Scope*. Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c). Section 5.361 of the Commission’s regulations, however, provides various limitations on the scope of discovery:

**§ 5.361. Limitation of scope of discovery and deposition.**

 (a)  Discovery or deposition is not permitted which:

  (1)  Is sought in bad faith.

   (2)  Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.

   (3)  Relates to matter which is privileged.

   (4)  Would require the making of an unreasonable investigation by the deponent, a party or witness.

52 Pa. Code § 5.361(a).

The EGS Parties object to the following Interrogatories:

OCA IV 3 For each EGS that has participated in the PPL SOP program since January 2018, provide a copy of the renewal notice issued to the SOP residential customer at the end of the 12-month contract. If the form and content of the renewal notice has changed during this time period, please provide a copy of each renewal notice used during this period.

OCA IV 4 For each month starting January 2018 and for each EGS that has participated in the PPL SOP program since January 2018, identify the number of residential customers that did not respond to the EGS’s renewal notice and remained a customer of the EGS.

OCA IV 5 For each EGS that provided information in response to Question #4, please provide the rate charged to the customer in a cents per kWh format for generation supply for each month that the customer remained with the EGS for the period January 2018 to the present month.

OCA admits that the three questions, as written, appear to apply to *all* EGSs participating in the PPL Standard Offer Program (SOP) and that this was an error. The OCA intended these inquiries to apply only to those EGSs that make up the EGS Parties, which was communicated to the EGSs counsel via e-mail.

Disposition

I agree with the EGS Parties that the questions go beyond the scope of Mr. Kallaher’s direct testimony and request competitively-sensitive information regarding customer retention rates, notices, etc. that the coalition members of the EGS Parties want to keep proprietary. In addition to eliciting privileged matter, the questions are unduly burdensome as well. Mr. Kallaher may be testifying as a witness for the coalition in general terms; however, he does not work for all of the companies. He works for Direct Energy. The questions are designed to verify or dispute PPL’s statistical assertions regarding its SOP program. Neither PPL nor any other Intervenor in this proceeding filed a response to OCA’s Motion to Compel in support of the Motion. Although PPL filed a separate Motion to Compel against the EGS Parties, that Motion was resolved and will be denied as moot.

OCA IV 13 With regard to every renewable energy contract offered by each of the Coalition EGSs to PPL’s residential customers, identify the renewable energy type, cost of the REC, and location of the renewable energy facility.

According to OCA, it proposed to revise this question via email as follows: (1) identify the renewable products offered by the EGS Parties in the PPL territory; (2) indicate whether the EGSs make use of the renewable feature to interest customers whose SOP contracts are expiring to renew with them at a higher price for the renewable product; and (3) if they do use the renewable feature in such a fashion, explain the benefit the renewable product provides to those customers who choose it. However, the EGS Parties objected to the original wording of question 13.

The EGSs objected to the original question 13 as beyond the scope of the proceeding, and not relevant to the issues addressed in the proceeding, lacking any foundation based on the EGSs testimony, unduly burdensome, not calculated to lead to the discovery of admissible evidence, and an impermissible fishing expedition.

Disposition

Revised question 13 requests proof in support of testimony that the competitive market is meeting consumer demand with a wide range of renewable products. I agree with EGS Parties that question 13 is unduly burdensome and seeks privileged information in a disaggregated manner, as this information is not on the public domain or requested in the aggregate. Rather, the question seeks specific information for each of the seven members of the EGS Parties including: identity of the renewable energy type, cost of the REC, and location of the renewable energy facility. There is no attempt to mask commercially sensitive data, the divulging of which could potentially be harmful to its members.

 THEREFORE,

 IT IS ORDERED:

1. That the Retail Energy Supply Association is deemed to have withdrawn and no longer has Intervenor status.
2. That Starion Energy PA, Inc. is granted Intervenor status.
3. That the Objections of the Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy Inc., Vistra Energy Corp., ENGIE Resources LLC, WGL Energy Services, Inc., and Direct Energy Services LLC (EGS Parties) to OCA’s Set IV Interrogatories Nos. 3,4,5 and 13 are sustained.
4. That the Motion to Compel filed by the Office of Consumer Advocate on July 13, 2020 is denied.
5. That the Motion to Compel filed by PPL Electric Utilities Corporation on July 20, 2020 is denied as moot.

Dated: August 7, 2020

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 Elizabeth H. Barnes

 Administrative Law

**P-2020-3019356 - PETITION OF PPL ELECTRIC UTILITIES CORPORATION FOR APPROVAL OF ITS DEFAULT SERVICE PLAN FOR THE PERIOD FROM JUNE 1, 2021 THROUGH MAY 31, 2025 (DSP V PETITION)**

*Updated 08/07/20*

MICHAEL W HASSELL ESQUIRE
LINDSAY A BERKSTRESSER ESQUIRE
JESSICA R ROGERS ESQUIRE 17 N 2ND STREET HARRISBURG PA 17101
**717.612.6029**Accepts eServiceKIMBERLY A KLOCK ESQUIRE
MICHAEL J SHAFER ESQUIRE PPL SERVICES CORP2 N 9TH STREET GENTW3ALLENTOWN PA 18101**610.774.5696
610.774.2599**
Accepts eServiceDAVID B MACGREGOR ESQUIREFOUR PENN CENTER
1600 JFK BOULEVARDPHILADELPHIA PA 19103-2808**215.587.1197***Via e-mail only due to Emergency Order at M-2020-3019262*dmacgregor@postschell.com

ELIZABETH R MARX ESQUIREPA UTILITY LAW PROJECT118 LOCUST STREETHARRISBURG PA 17101**717.236.9486**
Accepts eServiceKENNETH L MICKENS ESQUIRE316 YORKSHIRE DRIVEHARRISBURG PA 17111-6933**717.657.0938**
Accepts eService

JOHN F LUSHIS JR ESQUIRENORRIS MCLAUGHLIN PA515 WEST HAMILTON ST SUITE 502ALLENTOWN PA 18101**484.765.2211**Accepts eService

TODD S STEWART ESQUIREHAWKE MCKEON AND SNISCAK LLP100 NORTH TENTH STREETHARRISBURG PA 17101**717.236.1300** Accepts eService

GREGORY PETERSON
**\***KEVIN BLAKE
**\***THOMAS PUCHNER125 MAIN STREET
BUFFALO NY 14203
**716.483.5172
716.664.3906
*\**** Accepts eService
*Via e-mail only due to Emergency Order at M-2020-3019262*gpeterson@phillipslytle.com**\***DEANNE M O'DELL ESQUIRE
KRISTINE E MARSILIO ESUIRE
ECKERT SEAMANS CHERIN & MELLOTT LLC213 MARKET STREET 8TH FLOORHARRISBURG PA 17101**717.255.3744717.237.6037**
***\**** Accepts eService
*Via e-mail only due to Emergency Order at M-2020-3019262*kmarsilio@eckertseamans.com

GINA MILLER ESQUIREPA PUC BI&E400 NORTH STREETHARRISBURG PA 17120**717.783.8754** Accepts eService

LAUREN M BURGE ESQUIRE600 GRANT STREET44TH FLOORPITTSBURGH PA 15219**412.566.2146** Accepts eService

ADEOLU A BAKARE ESQUIRE
JO-ANNE THOMPSON ESQUIRE
PAMELA C POLACEK ESQUIRE MCNEES WALLACE & NURICK LLC100 PINE STREETPO BOX 1166HARRISBURG PA 17108-1166**717.237.5290
717.237.5285
717.237.5368**
Accepts eServiceDERRICK P WILLIAMSON ESQUIRE
BARRY A NAUM ESQUIRE SPILMAN THOMAS & BATTLE PLLC1100 BENT CREEK BLVD SUITE 101MECHANICSBURG PA 17050**717.795.2740
717.795.2742**
Accepts eService

DAVID EVRARD ESQUIRE
**\***ARON J BEATTYOFFICE OF CONSUMER ADVOCATE5TH FLOOR FORUM PLACE555 WALNUT STREETHARRISBURG PA 17101-1923**717.783.5048
\*** Accepts eService
*Via e-mail only due to Emergency Order at M-2020-3019262*devrard@paoca.org

STEVEN C GRAY ESQUIREOFFICE OF SMALL BUSINESS ADVOCATEFORUM PLACE555 WALNUT STREET 1ST FLOORHARRISBURG PA 17101**717.783.2525***Via e-mail only due to Emergency Order at M-2020-3019262*sgray@pa.gov

JAMES LASKEY ESQUIRE
400 CROSSING BLVD 8 FLOOR
PO BOX 5933
BRIDGEWATER NJ 08807
*Via e-mail only due to Emergency Order at M-2020-3019262*jlaskey@norris-law.com

1. The EGS Parties consist of the following Electric Generation Suppliers: Interstate Gas Supply, Inc., Shipley

Choice LLC, NRG Energy Inc., Vistra Energy Corp., ENGIE Resources LLC, WGL Energy Services, Inc., and

Direct Energy Services LLC. On June 25, 2020, these entities filed Direct Testimony in the instant proceeding

which was styled as EGS Parties’ Statement No. 1. [↑](#footnote-ref-1)