

**BEFORE  
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition the Boroughs of Camp Hill, Carlisle, :  
Hatboro Lansdowne, Media, Narberth, State :  
College And Swarthmore for a Declaratory Order : P-2024-3049623  
Regarding the Implementation of Community :  
Choice Aggregation :

**RULE TO SHOW CAUSE**

On June 20, 2024, the Boroughs of Carlisle, Hatboro, Lansdowne, Media, Narberth, State College and Swarthmore (the Boroughs) petitioned the Public Utility Commission for a Declaratory Order which asks the Commission to issue a declaratory order “to remove uncertainty concerning the lawfulness under Pennsylvania law and Commission precedent of the establishment by each Borough of a Community Choice Aggregation (CCA) program.” (Petition). Notice of the Petition was published in the July 6, 2024 *Pennsylvania Bulletin*.<sup>1</sup> The notice stated that protests and petitions to intervene must be filed by August 5, 2024.

Protests, answers and/or petitions to intervene were filed by the following parties on August 5, 2024: Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), Citizens’ Electric Company of Lewisburg (Citizens’), Wellsboro Electric Company (Wellsboro), Duquesne Light Company (DLC), FirstEnergy Pennsylvania Electric Company (FirstEnergy), PECO Energy Company (PECO), PPL Electric Utilities Corporation (PPL), NRG Energy Inc. (NRG), and Retail Energy Supply Association (RESA).<sup>2</sup>

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<sup>1</sup> 54 Pa.B. 3859 (July 6, 2024).

<sup>2</sup> Letters or comments in support of the proposal in the petition were also filed by several legislators, municipalities, local officials and business entities.

On September 3, 2024, the Boroughs amended their Petition to add Camp Hill Borough as a petitioner and proposed modifications to the original June 20, 2024 Petition.

The Petition was assigned to me and I scheduled a prehearing conference for September 13, 2024. The prehearing conference convened as scheduled. Following a discussion with the Parties, I issued an interim order which, among other things, directed the Boroughs to file a consolidated amended Petition which integrated the modifications proposed in the September 3, 2024 amendment. That order also scheduled a further prehearing conference for October 29, 2024, and directed the Parties to submit proposals for litigation by noon on October 28, 2024.

The Boroughs filed a consolidated amended Petition on September 20, 2024, as directed. Notice of the amended Petition and October 29, 2024 Prehearing Conference was published in the October 5, 2024 *Pennsylvania Bulletin*.<sup>3</sup> OCA, CAUSE-PA, Citizens', Wellsboro, PECO, PPL, NRG and RESA filed answers or comments to the amended petition on October 18, 2024. No additional entities filed answers or petitions to intervene.

OCA, PPL, Citizens' and Wellsboro served timely letters noting that the Parties had been unable to reach a consensus on a litigation plan for the Petition. OCA and PPL advocated their approaches for discovery and dispositive motions. The Boroughs emailed a letter at the end of the day proposing to file a motion for judgement on the pleadings.

The October 29, 2024 Prehearing Conference convened as scheduled. Counsel for the Parties appeared.

The Boroughs want the Commission to:

issue a declaratory order to remove uncertainty concerning the  
lawfulness under Pennsylvania law and Commission precedent

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<sup>3</sup> 54 Pa.B. 6349 (Oct. 5, 2024).

of the establishment by each Borough of a Community Choice Aggregation (“CCA”) program as described in more detail below (the “CCA Program” or the “Program”). CCA permits municipalities to act as an aggregator for the electric power demand of their residents and procure power on their behalf to achieve favorable pricing, better consumer protection, and other community goals.

As set forth in some detail in their Petition, the Boroughs wish to and adopt opt-out CCA program. Broadly, the Boroughs wish to design a program to acquire electricity supply on behalf of their citizens with the assistance and support of a program administrator. According to the Boroughs, they can better achieve renewable energy goals in response to the challenge of climate change. The Intervenors oppose the Boroughs proposal on a variety of grounds, including, but not limited to, the unknown impact on default service obligations, customer protections, and potential undesirable impacts on low income citizens. Parties representing electricity suppliers argue that they already supply renewable energy products that are available to retail customers and that due to the design of the program as an “opt-out” program, they may be liable for “slamming” which is prohibited by the Public Utility Code.

The Public Utility Code authorizes the Commission to issue a declaratory order to terminate an actual controversy or remove uncertainty.<sup>4</sup> However, the issuance of a declaratory order is discretionary and limited to instances where the controversy is based on existing rights, status or legal relations.<sup>5</sup>

THEREFORE,

IT IS ORDERED:

1. That on or before **November 26, 2024**, the Boroughs shall file a legal memorandum that shows cause why the Petition for Declaratory Order should not be dismissed.

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<sup>4</sup> 66 Pa. C.S. §331(f); 52 Pa. Code § 52 Pa. Code §5.42.

<sup>5</sup> *Pennsylvania Independent Petroleum Producers v. Department of Environmental Resources*, 525 A.2d 829 (Pa. Cmwlth. 1988), *affirmed*, 550 A.2d 195 (Pa. 1989), cert. denied, 489 U.S. 1096 (1989).

The Boroughs shall specifically explain why the Commission should exercise its discretion to entertain declaratory judgment and why the municipal aggregation proposal is not better addressed by rulemaking or legislation. The Boroughs should also address how declaratory judgement removes “uncertainty” regarding the application of the Commission’s existing statutory mandate and regulations, and does not abuse the due process rights of municipalities, utilities, energy suppliers and other stakeholders who are not parties to this proceeding.

2. Responses to the Borough’s memorandum may be filed on or before **December 23, 2024.**

3. The Boroughs may file a motion for judgement on the pleadings on or before November 26, 2024. Replies may be filed by December 23, 2024.

4. The above stated dates are in-hand dates and must be filed by with the Secretary’s Bureau by 4:30 on the dates stated. All filings must also be provided to me by email in Word format. **No late filings or email will be considered.**

Date: October 30, 2024

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/s/  
Mary D. Long  
Administrative Law Judge

**P-2024-3049623 - PETITION OF THE BOROUGHES OF CARLISLE, HATBORO, LANSDOWNE, MEDIA, NARBERTH, STATE COLLEGE, AND SWARTHMORE FOR A DECLARATORY ORDER REGARDING THE IMPLEMENTATION OF COMMUNITY CHOICE AGGREGATION.**

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