

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation for :
Approval of its Second Distributed Energy : P-2024-3049223
Resources Management Plan :

ORDER
DENYING PPL ELECTRIC UTILITIES CORPORATION'S
MOTION IN LIMINE AND/OR TO STRIKE AND MOTION FOR SANCTIONS

On May 20, 2024, PPL Electric Utilities Corporation (PPL) filed a Petition requesting that the Pennsylvania Public Utility Commission (Commission) approve tariff modifications and other authorizations that are needed to implement PPL's Second Distributed Energy Resources (DER) Management Plan, pursuant to Paragraph 62 of the Joint Petition for Settlement of All Issues approved by the Commission at Docket No. P-2019-3010128.

On June 7, 2024, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Public Statement in this proceeding.

On July 1, 2024, the Office of Consumer Advocate (OCA) filed an Answer to PPL's Petition.

On July 8, 2024, American Home Contractors, Inc., Enphase Energy, Inc., the Solar Energy Industries Association, SolarEdge Technologies, Inc., Sun Directed, Sunnova, Inc., Tesla, Inc., and Trinity Solar, LLC (collectively, the Joint Solar Parties or JSPs) filed an Answer, Petition to Intervene, and Protest in this proceeding.¹

¹ On September 13, 2024, the JSPs filed a letter stating that Sunnova, Inc. is no longer a member of the JSPs.

On July 10, 2024, the PP&L Industrial Customer Alliance (PPLICA) filed a Petition to Intervene.

On July 12, 2024, the Sustainable Energy Fund of Central Eastern Pennsylvania (SEF) filed a Petition to Intervene.

On July 24, 2024, a hearing notice was issued, establishing a telephonic prehearing conference for this proceeding for Tuesday, August 6, 2024, at 10:00 a.m. and assigning me as the Presiding Officer. A Prehearing Conference Order was issued on July 25, 2024 setting forth rules that would govern the prehearing conference.

The prehearing conference convened on August 6, 2024, as scheduled. PPL, OSBA, OCA, the JSPs, PPLICA, and SEF were present and represented by counsel. During the Prehearing Conference various procedural matters were discussed, including: the Petitions to Intervene filed by the JSPs, PPLICA, and SEF were granted; litigation schedules were set; and modifications to the Commission's discovery rules were established. A Scheduling Order was issued on August 7, 2024.

On September 13, 2024, PPL filed a Motion to Dismiss Objections and Compel Responses to Interrogatories and Requests for Production of Documents Propounded on the Joint Solar Parties – Set I (Motion to Compel). On September 16, 2024, the JSPs filed their Answer to PPL's Motion to Compel. Also on September 16, 2024, a hearing notice was issued, establishing a telephonic evidentiary hearing for this proceeding for Wednesday, December 4, 2024, and Thursday, December 5, 2024.

On September 24, 2024, I granted PPL's Motion to Compel (Motion to Compel Order).

On September 26, 2024, the JSPs filed a Petition for Certification of Petition for Interlocutory Review and Stay of Order (Petition for Interlocutory Review), seeking a stay and Commission review of the Motion to Compel Order.

On September 26, 2024, PPL filed a Motion for Protective Order.

On September 27, 2024, I issued a Protective Order.

On September 27, 2024, the JSPs filed a Petition for Leave to Withdraw its Petition for Interlocutory Review (Petition to Withdraw).

On October 9, 2024, I issued an order granting the JSPs Petition to Withdraw.

On October 21, 2024, I issued a Modified Scheduling Order.

On October 22, 2024, I issued a Corrected Modified Scheduling Order.

On January 8, 2025, a corrected hearing notice was issued, establishing a telephonic evidentiary hearing for this proceeding for Tuesday, February 11, 2025, Wednesday, February 12, 2025, and Thursday, February 13, 2025.

On January 24, 2025, PPL filed a Motion in Limine and/or to Strike Certain of the JSPs' Testimony and Exhibits and Motion for Sanctions (Motion).

On January 27, 2025, the JSPs filed an answer to PPL's Motion (Answer).

For the reasons discussed below, PPL's Motion will be denied.

In its Motion, PPL seeks to strike the JSPs' surrebuttal testimony and exhibits on electric safety, the National Electrical Code (NEC), and PPL's DER Management device installations on SolarEdge inverters, including any references to such testimony in any other witness's testimony, and prohibit the JSPs from introducing further evidence on those subjects. PPL avers such relief is warranted because:

1. The Joint Solar Parties' surrebuttal testimony and exhibits on electric safety, NEC, and PPL Electric's DER Management device installations is repetitive and should have been included in their case-in-chief (see 52 Pa. Code § 5.243(e)).
2. The Joint Solar Parties have introduced a total of six witnesses (two expert witnesses and four fact witnesses) on these subjects, and the ALJ should "limit appropriately the number of witnesses who may be heard upon an issue" (see 52 Pa. Code § 5.243(d)).
3. The Joint Solar Parties should be sanctioned for their failure to supplement their discovery responses about the fact and expert witnesses who would be presenting testimony on their behalf and the subject matters of their testimony, as required by the Commission's regulations in a timely fashion, despite multiple written requests by PPL Electric's counsel for them to do so and despite the Joint Solar Parties' counsel's written attestation to the ALJ and other parties that they would do so (see 52 Pa. Code §§ 5.324(c)-(d), 5.332, 5.372(c)).
4. The Joint Solar Parties failed to disclose the identities of expert witnesses who would be testifying on their behalf in their discovery responses, so those witnesses "will not be permitted to testify on behalf of the defaulting party at hearing" (see 52 Pa. Code §§ 5.324(a)(1), (b), 5.372(c)).

Section 5.483 of the Commission's regulations provides the following as to the authority of the presiding officer:

§ 5.483. Authority of presiding officer.

- (a) The presiding officer will have the authority specified in the act, subject to this title. This authority includes, but is not limited to, the power to exclude irrelevant, immaterial or unduly repetitive evidence, to prevent excessive examination of witnesses, to schedule and impose reasonable limitations on discovery and to otherwise regulate the course of the proceeding.

Furthermore, the presiding officer shall have all necessary authority to control the receipt of evidence, including ruling on the admissibility of evidence and confining the evidence to the issues in the proceeding and imposing, where appropriate, limitations on the number of

witnesses to be heard, the time and scope for direct and cross-examinations, the production of further evidence and any other necessary limitations. 52 Pa.Code § 5.403(a). The presiding officer must actively employ these powers to direct and focus the proceedings consistent with due process. 52 Pa.Code § 5.403(b).

PPL's Motion specifically objects to the submission of surrebuttal testimony from Alex Dinh (JSP Statement No. 11-SR), Dan Ferguson (JSP Statement No. 12-SR), Jacob Geller (JSP Statement No. 13-SR), and Bill Brooks (JSP Statement No. 14-SR).² As PPL states in its Motion, none of these witnesses presented direct testimony and exhibits on behalf of the JSPs. Instead, as PPL also states in its Motion, the JSPs submitted direct testimony from Jason Bobruk (JSP Statement No. 7) and William Stahlman (JSP Statement No. 10), in which those witnesses claimed PPL's installation of DER Management devices on SolarEdge inverters was unsafe, caused or contributed to alleged thermal events, violated the NEC, violated the UL listings of the inverters, and voided the inverters' warranties.

PPL claims that the additional testimony and exhibits provided by the JSPs is repetitive and should have been provided as part of the JSPs' direct case, and, because it was not, PPL has been prejudiced, and its due process rights have been violated. PPL avers that the JSPs offered no reason why this information could not have been provided in their direct testimony or why they failed to identify their new witnesses and the subject matter of the testimony before its submission. PPL asserts it is imperative that PPL be provided with a meaningful opportunity to be heard and present evidence refuting the JSPs' claims.

I do not find that the JSPs submission of surrebuttal testimony and exhibits from Alex Dinh (JSP Statement No. 11-SR), Dan Ferguson (JSP Statement No. 12-SR), Jacob Geller (JSP Statement No. 13-SR), and Bill Brooks (JSP Statement No. 14-SR) prejudices PPL so that its Motion must be granted. First, as PPL's Motion recognizes, the subject matter of the testimony and exhibits that PPL seeks to limit, i.e., evidence on electric safety, the NEC, and

² In the concluding paragraph of PPL's Motion, PPL only requests that its Motion be granted as it relates to Mr. Geller and Mr. Brooks. However, elsewhere in its Motion, PPL objects to the surrebuttal testimony and exhibits of Mr. Geller, Mr. Brooks, Mr. Dinh, and Mr. Ferguson. Therefore, this Order considers PPL's Motion to be in relation to these four witnesses' surrebuttal testimony and exhibits.

PPL's DER Management device installations on SolarEdge inverters, was already introduced in the JSPs direct testimony. Therefore, I do not find that merit in PPL's claim that the JSPs are attempting to introduce evidence in its surrebuttal testimony that should have been provided in direct testimony. PPL also asserts its Motion is warranted because it seeks to limit information that is repetitive. Although the objected-to surrebuttal testimony includes subject matter raised in previous testimony, I do not find it is repetitive so as to warrant granting PPL's Motion. As the JSPs state in their Answer, Mr. Dinh, Mr. Ferguson, Mr. Geller, and Mr. Brooks' testimony directly responds to assertions PPL made in its rebuttal testimony.

Second, PPL is correct that the JSPs are under a continuing obligation to supplement its discovery responses, including identification of expert witnesses. 52 Pa. Code § 5.332. Although I expect parties to promptly provide updates pursuant to Section 5.332, I do not find that these circumstances warrant granting PPL's Motion. As the introduction of two new PPL witnesses in the rebuttal phase of this proceeding demonstrates, it is not uncommon for parties to provide the testimony of additional witnesses in later rounds of testimony during a proceeding. Additionally, as PPL notes, the Commission must provide due process to the parties to this proceeding, including the opportunity to present evidence and cross-examine witnesses. *See* 66 Pa. C.S. § 332(c); *Popowsky v. Pa. Pub. Util. Comm'n*, 805 A.2d 637, 643 (Pa. Cmwlth. 2002). PPL's due process rights are not violated as PPL still has the opportunity to respond to the JSPs' surrebuttal testimony through its rejoinder testimony, as well as any cross-examination at the evidentiary hearings and briefing. *See id.*

P-2024-3049223 - PETITION OF PPL ELECTRIC UTILITIES CORP FOR APPROVAL OF ITS SECOND DISTRIBUTED ENERGY RESOURCES MANAGEMENT PLAN.

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