**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation for : P-2019-3010128

Approval of Tariff Modifications and Waivers of :

Regulations Necessary to Implement its :

Distributed Energy Resources Management Plan :

**PREHEARING ORDER**

On May 24, 2019, PPL Electric Utilities Corporation (PPL) filed a Petition for Approval of Tariff Modifications and Waivers of Regulations Necessary to Implement its Distributed Energy Resources Management Plan (Petition) with the Public Utility Commission (Commission). On July 30, 2019, the Office of the Consumer Advocate (OCA) filed an Answer to the Petition. Also, on July 30, 2019, the Natural Resources Defense Council (NRDC) and Sunrun Inc. (Sunrun) filed petitions to intervene, as well as an Answer to PPL’s Petition.

On August 22, 2019, PPL filed correspondence in response to other parties’ arguments that the Petition be denied or that the issues be addressed in a statewide proceeding. PPL argues, *inter alia*, the Commission should review its Petition through the standard administrative litigation process. It argues the issues raised in the Petition are ripe for review, the parties’ questions are best addressed through litigation, litigation would produce a clearer and more thorough record for the Commission to review when rendering its final decision, and a statewide proceeding inaccurately assumes that all Pennsylvania electric distribution companies (EDCs) face the same challenges presented by distributed energy resources (DERs) and need to address them in the same manner. PPL requests that the matter be assigned for hearing and disposition before an administrative law judge without delay.

On August 22, 2019, the ALJ DeVoe issued an Interim Order granting the Petitions to Intervene filed by NRDC and Sunrun.

On August 30, 2019, NRDC and Sunrun jointly filed a Preliminary Objection to PPL’s August 22, 2019, correspondence, arguing the August 22, 2019, correspondence is not authorized by the Commission’s rules of procedure and should be stricken from the record pursuant to Pa.Code § 5.101(b).

On August 30, 2019, NRDC and Sunrun also jointly filed a Motion for Leave to Reply and Reply to PPL’s August 22, 2019, correspondence. In their Reply, NRDC and Sunrun request, *inter alia*, that the Commission or the presiding officer issue a “preliminary ruling” addressing whether PPL’s Petition should be denied, and if not, whether the issues raised in the Petition should be addressed in a statewide rulemaking proceeding or proceed pursuant to an administrative litigation process.

On September 3, 2019, the Sustainable Energy Fund (SEF) filed a Petition to Intervene in these proceedings.

On September 9, 2019, PPL filed an Answer to the Preliminary Objection, arguing, *inter alia*, the August 22, 2019, correspondence is not a pleading to which a party can file a preliminary objection under the Commission’s regulations, correspondence such as the August 22, 2019, letter is routinely filed in Commission proceedings, and the filing of the August 22, 2019, letter did not affect any party’s substantive rights in this matter.

On September 9, 2019, PPL filed an Answer to NRDC and Sunrun’s Motion for Leave to Reply and Reply, arguing, *inter alia*, NRDC and Sunrun’s request for a “preliminary ruling” on the merits of PPL’s Petition without an evidentiary hearing is inappropriate and unlawful and that if PPL’s Petition were referred to a statewide proceeding, it would be denied due process.

A prehearing conference was convened on September 11, 2019. PPL, OCA, NRDC, Sunrun, and SEF were present and represented by counsel. ALJ DeVoe granted SEF’s petition to intervene, without objection from any party.

Then, the parties argued their positions regarding whether the issues raised in the Petition and Answers should proceed through a standard administrative litigation process before an administrative law judge or whether they should be considered by the Commission in a state-wide proceeding. After providing each party an opportunity to state its position and provide its argument, the undersigned presiding officer advised that any party wishing to file a petition for interlocutory review under 52 Pa.Code § 302 must do so by September 20, 2019. The parties were further directed to submit a proposed litigation schedule by September 27, 2019.

NRDC, Sunrun and OCA each filed petitions for interlocutory review by the Commission on September 20, 2019. By Interim Order entered September 25, 2019, the time to submit a litigation schedule was extended to November 6, 2019. The preliminary objections filed by NRDC and Sunrun and the Motion for Leave to Reply filed by NRDC and Sunrun were held in abeyance.

By Opinion and Order entered October 17, 2019, the Commission determined that the petitions were improperly before the Commission as premature and returned the matter to the Office of Administrative Law Judge.[[1]](#footnote-1)

PPL presented a joint proposed litigation schedule as directed by email dated November 6, 2019. OCA and SEF did not oppose PPL’s proposed schedule. Sunrun and NRDC also submitted a proposed litigation schedule which contemplated a multi-phased proceeding. The first phase would develop a record to determine whether PPL’s petition is premature and should be addressed in a statewide rulemaking proceeding. The second phase would develop a record on the merits of the technical issues of the petition.

At the request of Sunrun and NRDC, a further prehearing conference was convened on November 15, 2019. The parties argued their positions regarding the competing proposals for a litigation schedule. After consideration of the arguments made by each party, I determined that the litigation schedule proposed by PPL was reasonable and will create a complete record for the Commission’s consideration of both the policy issues raised by Sunrun and NRDC, and also give PPL the opportunity to develop a full evidentiary record in support of its petition.

**Litigation Schedule**

The parties are directed to comply with the following litigation schedule:

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| Date | Event |
| December 11, 2019 | Written Direct Testimony of PPL Due In-Hand |
| February 5, 2020 | Written Direct Testimony of All Other Parties Due In-Hand |
| March 4, 2020 | Written Rebuttal Testimony Due In-Hand |
| March 19, 2020 | Written Surrebuttal Testimony Due In-Hand |
| March 30, 2020 | Oral Rejoinder Outline |
| April 7, 2020 by noon | Witness Matrix |
| April 8-9, 2020 | Evidentiary Hearings and oral rejoinder in Harrisburg |
| May 5, 2020 | Main Briefs Due In-Hand |
| May 21, 2020 | Reply Briefs Due In-Hand |

The parties are reminded of the Commission’s requirements for the preparation and filing of written testimony. 52 Pa.Code §§ 5.412 and 5.412a. Written testimony must be accompanied by all exhibits to which it relates. Technical terms and concepts are to be clearly defined and explained in the testimonies and briefs. **No written testimony will be admitted into evidence unless accompanied by a verification or affidavit of the witness**.

Parties serving prepared testimony in proceedings pending before the Commission pursuant to 52 Pa.Code § 5.412(f) shall be required, within thirty (30) days after the final hearing in an adjudicatory proceeding 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 52 Pa.Code § 5.412a.

The above-stated dates are in-hand dates for service on the parties and the Presiding Administrative Law Judges (ALJs). The parties and the Presiding ALJs agree to accept email transmission of such material, so long as the subject email is received by 4:30 p.m. on the date due and provided the email is followed the next business day by sending a hard copy of the same material via first-class mail postage prepaid to the parties. The email addresses of the Presiding ALJs are [malong@pa.gov](mailto:malong@pa.gov) and edevoe@pa.gov. The Presiding ALJs will not accept facsimile transmissions greater than ten pages in length without prior authorization. If in doubt, please call (412) 565-3550.

Hearings will begin promptly at **10:00 a.m. on April 8, 2020.** The parties must confer before commencement of the hearings to schedule their witnesses so as to avoid “holes” or “dead time” during the hearings. **In the event that a partial settlement is achieved the parties should be prepared to proceed on the first scheduled day of hearing to present evidence on the non-resolved issues.**

## Outstanding Motions

The Motion for Leave to Reply filed by NRDC and Sunrun on August 30, 2019, and Preliminary Objection filed by NRDC and Sunrun on August 30, 2019, are dismissed as moot.

**Discovery**

The parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa.Code § 5.322. If this process fails, the parties have recourse to the Commission’s procedures for formal discovery, as herein modified. 52 Pa.Code §§ 5.321, *et* *seq*. The parties must not send the Presiding ALJs discovery material or cover letters, unless attached to a motion to compel. **All motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally.** If a motion to compel fails to contain such certification, the Presiding ALJs will contact the parties and direct them to pursue informal discovery.

**Protective Order**

The parties must comply with 52 Pa.Code § 5.362 regarding the preparation and filing of a motion for a protective order. If a party files a motion for a protective order, it must submit one hard copy of the proposed order and one copy by email to each of the Presiding ALJs. **The electronic version of the proposed order must be prepared on an IBM compatible system in *Microsoft Office Word* format.**

**Settlement and Stipulations**

The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa.Code § 5.231(a). The parties are strongly urged to seriously explore this possibility. The parties shall notify the presiding ALJs on or before **April 7, 2020, at noon** if they have resolved their dispute.

If settlement is not feasible, the parties are encouraged to 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 precious administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234. All stipulations entered into by the parties must be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.

**Cross-Examination**

Friendly cross-examination or cumulative cross-examination during hearings will not be permitted. 52 Pa.Code §§ 5.76 & 5.243.

**Briefs**

The parties must comply with 52 Pa.Code §§ 5.501, *et* *seq*., regarding the preparation and filing of briefs. Page limitations on briefs will be discussed on or before the last day of hearing. Where possible, the parties shall submit one hard copy of their briefs and one copy by email to each of the Presiding ALJs. **The electronic version of a brief must be prepared on an IBM compatible system in *Microsoft Office Word*format.** If in doubt, please call the office of the Presiding ALJs for clarification.

**Modification**

Any of the provisions of this Prehearing Order may be modified upon motion and good cause shown by any party in interest.

Date: November 18, 2019 /s/

Emily I. DeVoe

Administrative Law Judge

/s/

Mary D. Long

Administrative Law Judge

**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**

*Revised 11/18/19*

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1. I was assigned to co-preside over this matter along with ALJ DeVoe on November 1, 2019. [↑](#footnote-ref-1)