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July 20, 2020

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Filing Room  
Harrisburg, PA 17120

RE: Petition of PPL Electric Utilities Corporation for Approval of Its Default Service Plan for the Period From June 1, 2021 through May 31, 2025, Docket No. P-2020-3019356; **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 ANSWER OPPOSING THE OFFICE OF CONSUMER ADVOCATE MOTION TO COMPEL RESPONSES TO INTERROGATORIES, SET IV**

Dear Counsel:

Please find enclosed for filing with the Commission 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 Answer Opposing the Office of Consumer Advocate Motion to Compel Responses to Interrogatories, Set IV in the above-captioned proceeding. Copies of the Answer have been served in accordance with the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Todd S. Stewart  
*Counsel for EGS Parties*

TSS/jld

Enclosures

cc: Administrative Law Judge Elizabeth Barnes (via electronic mail)  
Per Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party)

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Todd S. Stewart

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation :  
for Approval of Its Default Service Plan : Docket No. P-2020-3019356  
for the Period From June 1, 2021 through :  
May 31, 2025 :

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**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  
ANSWER OPPOSING THE OFFICE OF CONSUMER ADVOCATE MOTION  
TO COMPEL RESPONSES TO INTERROGATORIES, SET IV**

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Pursuant to 52 Pa. Code § 5.342(g)(1), 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 (hereinafter “Coalition”) submits this Answer Opposing the Office of Consumer Advocate’s (“OCA”) Motion to Compel Responses to Interrogatories Set IV (“Motion”). As explained below, the Coalition raised various objections to certain discovery requests the OCA propounded in Set IV because they sought information that is not relevant to the Commission’s determination on PPL’s proposed default service plan, are beyond the scope of this proceeding and the Coalition’s direct testimony, are unduly burdensome, and amount to a mere fishing expedition which is not likely to lead to the discovery of relevant or admissible evidence in this proceeding.

## I. OBJECTIONS TO INTERROGATORIES

### A. OCA SET IV, NOS. 3-5

The OCA Set IV, Nos. 3-5 state<sup>1</sup>:

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.

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.

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.

The Coalition objected to these requests because they were unduly burdensome, have no foundation or relevance to the Commission's determination on PPL's default service plan, are beyond the scope of this proceeding and the Coalition's proffered testimony, plainly cannot lead to the discovery of admissible evidence in this matter, and amount to nothing more than a fishing expedition which is not allowed.

Pursuant to 52 Pa. Code § 5.321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence. *Id.* Under 52 Pa. Code § 5.361, the regulations limit discovery so as to not be unduly burdensome or that would require parties to carry out unreasonable

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<sup>1</sup> As noted in its motion, the OCA clarified that these requests only apply to the Coalition and its members, not all EGSs participating in the PPL SOP. Motion at 2.

investigations. *Id.* Further, discovery cannot take the form of a mere fishing expedition. *See, e.g., City of York v. Pa. P.U.C.*, 281 A.2d 261, 265 (Pa. Commw. Ct. 1971) (“Anything in the nature of a mere fishing expedition is not to be encouraged. Where the plaintiff will swear that some specific book contains material or important evidence, and sufficiently describes and identifies what he wants, it is proper that he should have it produced. But this does not entitle him to have brought in a mass of books and papers in order that he may search them through to gather evidence.”) (quoting *American Car & Foundry Company v. Alexandria Water Company*, 70 A. 867, 869 (Pa. Super. Ct. 1908). Instead, under 52 Pa. Code § 5.341(c), a party may propound interrogatories that relate to matters that can be inquired into under Section 5.321. Section 5.321(c) provides that a party is entitled to obtain discovery of any matter not privileged that is **relevant to a pending proceeding** and **reasonably calculated to lead to the discovery of admissible evidence**. 52 Pa. Code § 5.321(c) (emphasis added).

Contrary to the OCA’s bald assertion, the Coalition’s objections to the OCA’s Set IV No. 3-5 do not “lack merit.” Motion at 5. Rather, what the OCA seeks in Set IV No. 3-5 is a burdensome and irrelevant search for information from a limited subset of all of PPL’s EGSs in an attempt to extrapolate on the general issues the Coalition raised in its direct testimony, namely opposition to PPL’s proposed SOP changes, onto the entirety of PPL’s EGS group. The Coalition, consisting of a mere seven (7) EGSs, should not be compelled to answer burdensome discovery. Again, and contrary to the OCA’s meritless claims, the EGS Parties’ Direct Testimony did not “open the door” to the OCA’s inquire. The OCA claims that because the Coalition simply opposed the SOP changes in PPL’s DSP, the OCA is therefore entitled to any discovery on SOP information, no matter how irrelevant or how far afield from the actual substance of the EGS Parties’ Direct Testimony. This includes SOP customer participation since 2018, SOP customer

renewal information, SOP rates charged, and how EGSs market certain products to expiring SOP customers. Motion at 5. Simply because the Coalition opposed PPL's proposed SOP changes, and challenged the conclusions that PPL extrapolated from the vast data it presented, does not make the information on the Coalition's individual members' renewal notices, total SOP customers, and rates charged by each Coalition member, which the OCA seeks, any more relevant. Mere opposition to a general premise does not magically make the Coalition member's information sought by the OCA relevant or admissible evidence. As the OCA well knows, the SOP program was a Commission directed initiative, which is offered in all EDC service territories and the requirements suppliers and utilities follow are set forth in these Commission-approved plans.<sup>2</sup> The OCA continues to blindly cast a net, claiming that opposition alone allows for their discovery, but their fishing expedition should not be permitted.

Further, while the OCA hastily states that it believes the questions "*can* lead to admissible evidence," a key point is missed. Motion at 5. The OCA served Set IV on a Coalition of EGSs which filed joint direct testimony by Mr. Kallaher, who works for Direct Energy. The testimony was general, outward facing (i.e., discussed only PPL's testimony) and did not discuss any single facet of the individual EGSs businesses, operations, individual impacts of the proposed DSP etc. Indeed, since the EGSs are competing EGSs in the market, such information would necessarily be confidential amongst themselves, showing why the Coalition's testimony did not touch on the issues the OCA contends, regardless of its assertions.

Therein lies another problem - each EGS in the Coalition did not and does not intend to present individual witnesses. They do not intend to present witnesses in their individual capacity.

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<sup>2</sup> *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*; Docket No. I-2011-2237952 (Final Order entered March 2, 2012)("Final Work Plan Order")

Doing so would be both costly and duplicative – costs and duplications that would ultimately be borne by customers. Each answer to the OCA’s Set IV No. 3-5 to which the Coalition objected would contain confidential business information that even fellow members of the Coalition could not see or hear. This raises an interesting dilemma: does the OCA intend to subpoena each EGS in the Coalition to have their witness authenticate whatever the OCA’s fishing expedition uncovers? If so, how will that impact the hearing procedure? And, more critical, would any of the responses be admissible for any general purpose, given the small sample size? Assuming the answer is no, it would appear that the OCA is rather attempting to adduce materials with which to harass and embarrass members of the coalition using highly confidential business information that the OCA believes would allow for some esoteric attack on the suppliers, while ignoring that the EGS Parties do not have the burden of proof and any OCA effort to lock them in the pillory and hurl rotten tomatoes in their direction would not prove or disprove the viability of the PPL proposal.

The OCA’s own rationale falls flat as well. The lynchpin of the OCA’s argument is best summarized by their own flawed logic:

The SOP changes proposed by PPL in DSP V are obviously a part of the ongoing proceeding and something as to which a Commission decision will have to be rendered. By opposing these changes, the EGS parties put them squarely at issue in this case.

Motion at 5. Simply because the SOP changes proposed by PPL in DSP V will be decided by the Commission and the EGS parties oppose them does not make Set IV No. 3-5 relevant and not burdensome. The OCA is in fact correct, this Commission and Your Honor will render a decision on PPL’s proposed SOP changes. That fact is a red herring however in this discovery dispute and should be disregarded in deciding whether or not the EGSs should be compelled to answer the objected to Set IV interrogatories. The requested information from each individual EGS has no



bearing on the ultimate issue in the matter. The EGSs renewal notices, numbers of responses to renewal notices, and the rates charged to the customer since January 2018 have no material impact on the Commission's decision on PPLs proposed DSP and as a small, seven member subset, such limited data is not capable of implying anything to the whole group of suppliers making the unnecessary burden placed on the Coalition even greater.

The OCA Set IV Nos 3-5 are unduly burdensome, have no foundation in or relevance to whether or not this Commission should approve PPL's proposed default service plan – the actual matter in P-2020-3019356 to be resolved, and is nothing more than a fishing expedition which is not allowed. The Motion should be denied.

B. OBJECTION TO OCA SET IV, NO. 13

The OCA Set IV, No. 13 states:

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.

By email, the OCA revised this question as reflected in the Motion:

(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.

*See* Motion at 6. The Coalition objects to the proposed revisions on similar grounds previously stated. No. 13(1) requests that each Coalition member identify the renewable products offered in PPL's territory. The Coalition members' renewable products are irrelevant to whether or not the Commission and Your Honor should approve PPL's proposed default service plan – the actual matter in P-2020-3019356 to be resolved.

Set IV No. 13(2) and 13(3) are similarly deficient. The OCA is correct that the Coalition strongly opposes the creation of a new Renewal Energy Rate Program as a “second” default service rate because it is unjustified and not permitted under the Competition act. Motion at 6. This creation of a new rate class and the testimony provided has nothing to do with the OCA’s 13(2) and 13(3). Whether or not the EGSs use renewable features to “interest” customers whose SOP contracts are expiring or if renewable feature brings benefits to the customer has no bearing on the DSP proposed by PPL. Such information is irrelevant and amounts to nothing more than a fishing expedition which is not allowed. *Supra* Section I.A.

## II. CONCLUSION

WHEREFORE, the Coalition requests that the OCA’s Motion to Compel Responses to Interrogatory Set IV Nos. 3-5, and 13 be denied as state herein.

Respectively submitted,



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