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July 20, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing is the Motion to Compel Answers to Interrogatories and Requests for Production of Documents Propounded by PPL Electric – Set II, Question Nos. 2, 3, 6 and 9, in the above-referenced proceeding. Copies will be provided per the Certificate of Service.

Respectfully submitted,

Lindsay A. Berkstresser

LAB/jl
Enclosures

cc: Honorable Elizabeth Barnes
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant) and the Pennsylvania Public Utility Commission's March 20, 2020 Emergency Order at Docket No. M-2020-3019262.

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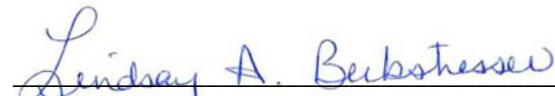
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Date: July 20, 2020


Lindsay A. Berkstresser

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation for :
Approval of Its Default Service Plan for the Period : P-2020-3019356
From June 1, 2021 through May 31, 2025 :

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.342(g)(1), YOU MAY FILE A REPLY TO THE ENCLOSED MOTION TO COMPEL WITHIN FIVE (5) DAYS AFTER THE DATE OF SERVICE. YOUR REPLY SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR REPLY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

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Dated: July 20, 2020

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation for :
Approval of Its Default Service Plan for the Period : P-2020-3019356
From June 1, 2021 through May 31, 2025 :

**MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS PROPOUNDED BY
PPL ELECTRIC – SET II, QUESTION NOS. 2, 3, 6 and 9**

TO ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

As explained herein, PPL Electric Utilities Corporation (“PPL Electric”) hereby files, pursuant to 52 Pa. Code § 5.342, this Motion to Compel Answers to its Set II Interrogatories, Questions 2, 3, 6 and 9 directed to Interstate Gas Supply, Inc. (“Interstate”), Shipley Choice LLC (“Shipley”), Vistra Energy Corp. (“Vistra”), Engie Resources LLC (“Engie”), WGL Energy Services, Inc. (“WGL”), and Direct Energy Services, LLC (“Direct Energy”) (collectively, the “EGS Parties”). The Motion to Compel requests that Administrative Law Judge Elizabeth H. Barnes direct the EGS Parties to provide full and complete responses to Set II Interrogatories, Questions 2, 3, 6 and a portion of Question 9, as required by 52 Pa. Code § 5.342(a)(4). In support of its Motion, PPL Electric states as follows:

I. BACKGROUND

On July 8, 2020, PPL Electric served its Set II Interrogatories and Requests for Production of Documents on the EGS Parties. On July 13, 2020, the EGS Parties served their formal objections to Set II, Questions 2, 3, 6, 7(ii), 9 and 12.¹ A true and correct copy of the EGS Parties’ objections is attached hereto as Appendix A. Counsel for PPL Electric attempted

¹ The EGS Parties served formal objections on the same day that oral objections were due.

to contact counsel for the EGS Parties on July 16, 2020 to discuss the objections. To date, PPL Electric has not received a response. In the spirit of compromise, PPL Electric notes that it is not seeking to compel a response to Set II, Question 7(ii)² or Question 12. In addition, as explained below, PPL Electric is seeking to compel a response to only a portion of Question 9.

II. LEGAL STANDARD

Pursuant to Section 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. 52 Pa. Code § 5.321(c). Parties may also request documents “which are in the possession, custody or control of the party upon whom the request is served.” 52 Pa. Code § 5.349(a)(1). The Commission’s regulations prohibit discovery that would cause unreasonable burden, expense, or delay, or that would cause the answering party to undertake an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4). However, the Commission generally provides wide latitude in discovery matters. *See Pa. P.U.C. v. The Peoples Natural Gas Co.*, 62 Pa. P.U.C. 56 (Order Entered Aug. 26, 1986); *Pa. P.U.C. v. Equitable Gas Co.*, 61 Pa. P.U.C. 468 (Order Entered May 16, 1986).

III. ARGUMENT

A. THE EGS PARTIES SHOULD BE COMPELLED TO PROVIDE A FULL AND COMPLETE RESPONSE TO SET II, QUESTION 2.

The information requested in Question 2 pertains to the EGS Parties’ proposal that PPL Electric should “mirror the [CAP shopping] program that FirstEnergy put into place.” EGS Parties Direct Testimony, p. 10, ln. 18 – p. 11, ln. 11. Specifically, Question 2 provides:

² The EGS Parties have objected to only subpart (ii) of Question 7. PPL Electric agrees to withdraw subpart (ii) only and continues to seek a response to the remainder of Question 7.

PPL to EGS Parties-II-2:

See EGS Parties Direct Testimony page 10, lines 21-22. Which EGS Party member companies have previously and/or are currently participating in the FirstEnergy CAP shopping Program? Please provide the period(s) each member company participated in the FirstEnergy CAP shopping program.

The EGS Parties argue in their objections that Question 2 is beyond the scope of the EGS Parties' testimony and beyond the scope of this proceeding because PPL Electric is the subject of this proceeding, not FirstEnergy. The EGS Parties also argue that each of the EGS Parties' participation in FirstEnergy's program is not relevant. These arguments are without merit.

Question 2 is relevant to this proceeding because the EGS Parties raised the issue of FirstEnergy's CAP shopping program. In their direct testimony, the EGS Parties recommended that PPL Electric's CAP shopping program mirror the FirstEnergy program. EGS Parties Direct Testimony, p. 10, ln. 18 – p. 11, ln. 11. PPL Electric is entitled to ask discovery that is directly related to a proposal that the EGS Parties raised in their testimony. Whether any of the EGS Parties have experience with participating in the FirstEnergy CAP shopping program is relevant to examining the EGS Parties' proposal that PPL Electric implement the same program as FirstEnergy. If the EGS Parties have not participated in FirstEnergy's CAP shopping program, they should be required to indicate as such in their response to the interrogatory. The EGS Parties are making a proposal in their direct testimony, while at the same time seeking to prevent PPL Electric from asking discovery on the proposal. The EGS Parties cannot "have it both ways" by making a proposal in direct testimony and then refusing to answer discovery on the proposal because it was not part of PPL Electric's direct case. It is also important to note that PPL Electric's rationale to eliminate CAP-SOP is lack of supplier support for the program. Ascertaining the level of supplier support for the FirstEnergy CAP shopping program is directly relevant in determining whether adopting a program similar to FirstEnergy's will resolve the

issues PPL Electric is experiencing with its CAP-SOP. If the EGS Parties refuse to provide an answer to the discovery question relevant to their proposal, they should be prohibited from raising the proposal and it should be stricken from their direct testimony.

In support of their objection, the EGS Parties also argue that Interstate, Shipley, NRG, Vistra, Engie, WGL, and Direct Energy should not have to provide the information because they have intervened in this proceeding collectively as the “EGS Parties.” However, the EGS Parties in this case are the intervenors themselves, i.e. Interstate, Shipley, NRG, Vistra, Engie, WGL, and Direct Energy. The EGS Parties represent their own interests – not the interest of an industry association or some other third-party organization. The EGS Parties should not be able to hide behind the fact that they intervened in this proceeding as a group to avoid answering relevant discovery. Indeed, if the EGS Parties were to have all intervened in this proceeding separately, they would be obligated to answer the discovery. The result should be no different simply because Interstate, Shipley, NRG, Vistra, Engie, WGL, and Direct Energy refer to themselves collectively as the “EGS Parties” and all have the same witness and counsel. If the response to Question 2 contains “confidential business dealings” as the EGS Parties suggest, such material can be appropriately dealt with under the provisions of the Protective Order issued in this proceeding and is not a reason to withhold the information from PPL Electric.

For these reasons, the information requested in Set II, Question 2 is relevant and the EGS Parties should be directed to provide a response.

B. THE EGS PARTIES SHOULD BE COMPELLED TO PROVIDE FULL AND COMPLETE RESPONSES TO SET II, QUESTIONS 3 AND 6.

Question 3 and 6 seek information from the EGS Parties regarding what happens to SOP and CAP SOP customers at the end of their contract. These questions are directly relevant to the issues in this case. Questions 3 and 6 state:

EGS Parties-II-3: If PPL were to allow CAP customers to remain with their CAP SOP EGS at the end of the 12-month contract term as long as the EGS agreed to serve them at or below the current PTC, how do the EGS Parties recommend this requirement be monitored and enforced? What penalty should be imposed on those EGSs who violate the requirements of the program?

EGS Parties-II-6: At the conclusion of a customer's contract term for the SOP or any other retail shopping contract, do all customers affirmatively consent to remain with EGS Party member companies? If a customer does not affirmatively consent to begin on a new rate with a member company, do customers passively transition to a new rate following communication of the new rate and terms? If a customer is passively moved to a new contract, at what intervals do member companies communicate with the customer to inform them of their passive consent and the rates they are paying? What information is communicated?

The EGS Parties object to these questions on the basis that they are “what if” questions, irrelevant, overly annoying and burdensome and attempt to overturn prior Commission determinations. Their objections are without merit.

Questions 3 and 6 are not simply hypothetical “what if” questions. EGS Parties witness Mr. Kallaher specifically recommended in his direct testimony that PPL Electric should “allow EGSs to retain their CAP SOP customers at the end of the initial 12-month term so long as they agree to serve those customers at or below the current PTC rate.” EGS Parties’ Statement No. 1, p. 11, ln. 2-4. Question 3 seeks additional information directly related to this proposal – how the requirement would be monitored and enforced and any penalties for non-compliance. The EGS Parties cannot submit a proposal in testimony and then claim any follow-up questions related to the proposal are not relevant or are too hypothetical in nature. It should not be PPL Electric’s burden to identify how to enforce an EGS Parties’ proposal, particularly where PPL Electric does not have information to allow it to determine if an EGS is in fact in compliance with the proposal. PPL Electric is entitled to seek discovery regarding the EGS Parties’ position on enforcement that would assist in evaluating the proposal.

Similarly, Question 6 is not a “what if” question. Question 6 seeks to ascertain what currently happens to a SOP customer or other retail contract customer when the contract ends. Question 6 does not ask the EGS Parties to make conjectures about a hypothetical scenario. What should happen to a shopping customer at the end of their contract is an issue in this case. Therefore, Question 6 is relevant.

The EGS Parties state that answering Questions 3 and 6 would be overly annoying and burdensome. It is not reasonable to claim that questions regarding the EGS Parties’ own proposal and the EGS Parties’ existing practices would be overly burdensome to answer. PPL Electric is not asking the EGS Parties to undertake any new research or analysis. PPL Electric is simply seeking information regarding the EGS Parties’ current position and practices.

Finally, it is not reasonable to suggest that these interrogatories are improper because they “attempt to overturn prior Commission determinations.” EGS Parties Motion to Compel, p. 6. Whether the information sought in a discovery question would “comply” with prior Commission determinations does not make the discovery question inappropriate. Based upon relevant evidence, the Commission can, and has, changed prior determinations. The EGS Parties should not be permitted to refuse to provide information that might be used to justify a different outcome from prior determinations in other proceedings, and then assert that the Company has offered no evidence to justify a change from a prior determination.

C. THE EGS PARTIES SHOULD BE COMPELLED TO PROVIDE A FULL AND COMPLETE RESPONSE TO A PORTION OF SET II, QUESTION 9.

Question 9 provides as follows:

EGS Parties-II-9: Describe how each EGS Parties member company charges customers for transmission costs, broken down by customer group (Residential, Small C&I, and Large C&I). Do any member companies include special provisions in customer contracts to allow transmission costs to be updated for changes in the customer NITS tags or transmission rates charged by PJM? If yes:

- i. Do all customer contracts contain such provisions? If no, describe which customer groups contain such provisions.
- ii. If not all contracts contain such provision, detail why such provisions are included in some customer contracts but not others?

The EGS Parties object to Question 9 on the basis that it is irrelevant and unduly burdensome. The EGS Parties also argue that PPL Electric cannot seek information from each EGS party. As explained in Section A above, the EGS Parties should not be able to hide behind the fact that they intervened in this proceeding as a group to avoid answering relevant discovery.

PPL Electric continues to seek a response to the following portions of Question 9: “Describe how each EGS Parties member company charges customers for transmission costs, broken down by customer group (Residential, Small C&I, and Large C&I). Do any member companies include special provisions in customer contracts to allow transmission costs to be updated for changes in the customer NITS tags or transmission rates charged by PJM? If yes: i. Do all customer contracts contain such provisions?” PPL Electric agrees to withdraw the remainder of subparts (i) and (ii) of Question 9.

The EGS Parties’ argue that Question 9 is not relevant because the question pertains to the EGS Parties’ practices, rather than the practices of PPL Electric. This argument is without merit. EGS Parties’ witness Mr. Kallaher testified regarding the impacts of NITS charges on the EGS Parties, and seeks to change the process for recovery of NITS charges to require PPL Electric to recover from shopping customers the costs of NITS charges that are currently charged to, and recovered by, EGSs in their rates to their customers. EGS Parties Direct Testimony, pp. 30-37. PPL Electric is entitled to seek information regarding the claimed impacts made by the EGS Parties in testimony. Discovery does not have to be limited solely to the practices of PPL Electric to be relevant to this case, where the EGS Parties have made a proposal to shift the responsibility to recover NITS from the EGSs to PPL Electric.

The EGS Parties' argument that Question 9 is unduly burdensome because the EGS Parties do not have the burden of proof is also without merit. Other parties *do* bear the burden to provide evidence in support of their proposals that were not contained in the Company's direct case. *See e.g., Pa. P.U.C. v. Metropolitan Edison Company, et al.*, Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (January 11, 2007). Further, discovery may be obtained "whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party" 52 Pa. Code §5.321 (c). Moreover, regardless of which party carries the burden of proof, Question 9 is not unduly burdensome. Information regarding the EGS Parties' own customer contracts should be readily available to the EGS Parties and would not require an unreasonable search.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge Elizabeth H. Barnes grant this Motion to Compel and order the EGS Parties to fully answer PPL Electric Set II, Questions 2, 3 and 6 and a portion of Question 9.

Respectfully submitted,

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Dated: July 20, 2020

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