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September 17, 2020

**Via Electronic Filing**

Rosemary Chiavetta, Esq.  
PA Public Utility Commission  
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 from June 1, 2021 through May 31, 2025 – Docket No. P-2020-3019356

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Starion Energy PA, Inc.'s ("Starion") Reply Brief in the above matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell, Esq.

DMO/lww

Enclosure

cc: Hon. Elizabeth Barnes w/enc.  
Cert. of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Starion Energy's Reply Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Date: September 17, 2020



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Deanne M. O'Dell, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities :  
Corporation for Approval of a Default :  
Service Program and Procurement Plan for : Docket No. P-2020-3019356  
the Period June 1, 2021 Through May 31, :  
2025 :

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**REPLY BRIEF OF STARION ENERGY PA, INC.**

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**I. INTRODUCTION AND SUMMARY OF ARGUMENT**

In its Main Brief, Starion Energy PA, Inc. (“Starion”) explained why the Commission must deny the proposal of PPL Electric Utilities Corporation (“PPL”) to automatically switch the standard offer program (“SOP”) customers of electric generation suppliers (“EGSs”) to default service if the SOP customer takes no action to the contrary. As explained therein, PPL’s proposal is unlawful,<sup>1</sup> a reversal of decades of Commission precedent,<sup>2</sup> and will result in the end of its SOP program.<sup>3</sup> The majority of the reasons upon which Starion advocates that PPL’s proposals are unlawful were further supported by PPL’s Main Brief. More specifically, PPL made clear that its proposal is intended to: (1) “protect passive customer from paying rates higher, and in most cases much higher”;<sup>4</sup> and, (2) address “reputational harm” to PPL.<sup>5</sup> As the Commission has no authority to regulate EGS pricing and PPL is prohibited from elevating default service over competitive offers, PPL’s proposal must be rejected.

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<sup>1</sup> Starion Main Brief (“MB”) at 12-16, 19-25

<sup>2</sup> Starion MB at 16-19.

<sup>3</sup> Starion MB at 9-12.

<sup>4</sup> PPL MB at 20.

<sup>5</sup> PPL MB at 22.

Because Starion anticipated and fully addressed many of the arguments in support of PPL’s proposal in its Main Brief (and incorporates those argument herein), this Reply Brief is narrowly focused on: (1) setting the record straight regarding EGS access to its SOP customer information; and, (2) responding to claims that the Commission can – by way of a program rule – authorize PPL to engage in slamming via the automatic return of EGS SOP customers to default service.

**II. SO LONG AS CUSTOMER CONSENTS, EGSs HAVE EVERY RIGHT TO HAVE ACCESS TO SOP CUSTOMER INFORMATION**

PPL initially stated that its proposal to automatically return EGS SOP customers to default service who do not take affirmative action to the contrary is based on PPL’s concern that “customers are taking no action in response to the notice that their contract is expiring.”<sup>6</sup> In response to Starion’s observation that EGSs are not provided with a referred customer’s telephone number or email address when the customer is referred through the SOP and that such lack of information can hinder the EGS’s ability to contact its SOP customer,<sup>7</sup> PPL doubled down and stated “EGSs have every opportunity to obtain [contact] information from their customers, and to use it to contact the customer prior to the conclusion of their SOP contract.”<sup>8</sup> In its Main Brief, PPL states that it “strongly opposes” being required to provide EGSs with the telephone number and e-mail addresses of SOP customers because to do so would “violate distribution customers’ expectations of privacy.”<sup>9</sup> PPL’s position here illustrates its desire to

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<sup>6</sup> PPL St. No. 4 at 12.

<sup>7</sup> Starion St. No. 1 at 9.

<sup>8</sup> PPL St. No. 4-R at 7-8.

<sup>9</sup> PPL MB at 24.

jealously guard its default service market share in violation of the entire purpose of the Electricity Generation Customer Choice and Competition Act (“Competition Act”).<sup>10</sup>

More specifically, if PPL’s sincere concern here is to properly educate SOP customers, then implementing measures to ensure that the EGS can communicate with its referred customer make the most sense (and are the least objectionable).<sup>11</sup> As explained by Starion Witness Muzsi, EGSs are not involved in the enrollment of customers into the SOP and only receive an electronic file from PPL with just the SOP customer’s billing address. This hinders the ability of the EGS to more directly contact their customers and it strains credulity to believe that with just a billing address the EGS can acquire more information from the SOP customer via a direct mailing request.<sup>12</sup> In contrast, EGSs receive contact information for customers who are enrolled outside of SOP because the EGS is in direct communication with the customer at the time of enrollment and, therefore, can ask the customer to provide his or her contact information. Even though PPL has the information and sharing it with the EGS could address PPL’s alleged education concern, PPL defensively argues that it cannot provide EGSs more customer information because it would violate distribution customers’ expectations of privacy.<sup>13</sup>

That EGSs have the right to access information about their customers is well-established by Commission precedent. The SOP customers are customers of the EGS. The EGS has paid PPL a referral fee, has agreed to specific contract terms as part of participation in the SOP

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<sup>10</sup> 66 Pa. C.S. §§2801-2812.

<sup>11</sup> As explained more fully in Starion’s Main Brief, PPL’s proposal would result in PPL contacting the EGS SOP customer before the EGS has had the opportunity (or requirement) to communicate the renewal offer to the SOP customer and, therefore, PPL cannot seriously “educate” the EGS customer about EGS options post SOP contract. Starion MB at 21; Starion St. No. 1 at 12.

<sup>12</sup> Starion St. No. 1-SR at 5-6.

<sup>13</sup> PPL MB at 24.

program, and is providing the supply service to its referred SOP customer. As reiterated by the Commission in 2018 citing to a Secretarial Letter from 1991, EGSs are not “third parties” and receiving information from the EDC is receiving information “about their own customers.”<sup>14</sup> To further ensure that customers are aware of EGSs accessing their data, the Commission added a new requirement that EGSs inform their customers of this as part of the customer disclosure statement.<sup>15</sup> While true that PPL acquires this information in its role as the distribution company, that fact does not somehow also give PPL ownership over the data or the right to deny EGSs access to it. Simply stated, customers own and control all of their data.

As explained by Starion Witness Muzsi, a customer’s telephone number and email address belongs to the customer who is the one that should control the information, not the utility.<sup>16</sup> Given this, a simple question to the consumer during the SOP enrollment process asking whether he or she is willing to share his or her telephone number and/or email address with the SOP supplier is the most easy and non-objectionable way to deal with what PPL claims to be concerned about, i.e. customers “passively” rolling onto EGS service following the SOP contract expiration. Moreover, such a process ensures that the customer is the one given the right to decide whether or not to share his or her information with the SOP EGS.<sup>17</sup> PPL’s refusal to seriously entertain this idea and defend a proposal that would inevitably lead to more SOP

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<sup>14</sup> *Petition of Metropolitan Edison Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket No. P-2017-2637855, Final Order entered September 4, 2018 at 25. (citing Secretarial Letter dated February 5, 1999 re: EDI – Providing Customer payment Information Docket No. M-00960890F.0015).

<sup>15</sup> *Rulemaking Regarding Electricity Generation Customer Choice, 52 Pa. Code Chapter 54*, Docket No. L-2017-2628991, Final Rulemaking Order entered February 27, 2020 at 71-74. (New section 52 Pa. Code 54.5(k) to be effective September 30, 2020 codifies this issue).

<sup>16</sup> Starion St. No. 1-SR at 5-6.

<sup>17</sup> Starion St. No. 1-SR at 6.

customers returning to PPL's default service can only be viewed as a desire to increase market share at the expense of developing a workably competitive market – a result the Commission cannot legally permit.

**III. COMMISSION CANNOT LEGALLY ADOPT AN SOP PROGRAM RULE THAT AUTOMATICALLY RETURNS EGS CUSTOMER TO DEFAULT SERVICE**

As explained more fully in Starion's Main Brief, the Commission has well-established that EGSs are legally permitted to convert an existing SOP contract consistent with the terms of its contract renewal notices and without the customer taking affirmative action to the contrary and any proposal to ignore this and switch an SOP customer to default service would constitute illegal slamming.<sup>18</sup> In response, PPL and other parties take the view that slamming does not occur if the Commission authorized the return to default service as part of the SOP program rules.<sup>19</sup> The Commission, however, cannot authorize an otherwise illegal action by making it part of a program rule.

Even if one were to conclude that slamming concerns can be obviated through pre-enrollment disclosure (a view with which Starion does not agree), the problem remains that returning customers to default service is antithetical to the purpose and intent of the Competition Act which is to create a competitive market for generation supply service and to ensure that the historical monopoly provider does not wield its competitive advantages to frustrate the development of the competitive market.<sup>20</sup> Developing a program rule (ironically for a program intended to enhance competitive market development) that returns customers to the monopoly

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<sup>18</sup> Starion MB at 16-18.

<sup>19</sup> PPL MB at 19; Office of Consumer Advocate ("OCA") MB at 18; and, Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") MB at 33-34.

<sup>20</sup> See Starion MB at 4-5 and legal cites provided therein.



provider's default service is wholly inconsistent with the Competition Act because it tilts the scales in favor of default service. This is no different from the Commission's conclusion that requiring new customers in a utility's service territory to take default service for a period of time "inappropriately elevates default service to a favored, primary service role."<sup>21</sup> In both cases, the status quo is tilting the odds in favor of default service when the Commission is charged with developing a workably competitive market.

The fact that other "program rules" could be implemented to address PPL's stated concerns that would keep the SOP customers in the competitive market (like exploring the sharing of customer information as discussed in the previous section) underscores the unlawfulness of PPL's proposal. In other words, other – less objectionable and anticompetitive processes are available – such that an illegal automatic return to default is not necessary. In sum, the Commission lacks the legal authority to do what PPL proposes here and the proposal cannot be saved by incorporating it as a program element of a competitive market enhancement program.

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<sup>21</sup> *PPL Electric Utilities Corporation Plan for Seamless Moves and Instant Connects*, Docket No. M-2014-2401103, Final Order entered October 1, 2015 at 11.

**IV. CONCLUSION**

PPL's proposal to automatically transfer SOP customers to default service upon the expiration of their SOP contract is unlawful, a reversal of decades of Commission precedent, and will result in the end of its SOP program. Therefore, Starion respectfully requests that the ALJ issue a Recommended Decision rejecting PPL's proposal to automatically transfer SOP customers to default service upon the expiration of their SOP contract.

Respectfully submitted,



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