

Deanne M. O'Dell  
717.255.3744  
dodell@eckertseamans.com

October 26, 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") Exceptions 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.  
[ra-osa@pa.gov](mailto:ra-osa@pa.gov) w/enc.

## CERTIFICATE OF SERVICE

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

### **Via Email only**

Michael W. Hassell, Esq.  
Lindsay Berkstresser, Esq.  
Post & Schell  
17 North Second St., 12<sup>th</sup> Fl.  
Harrisburg, PA 17101-1601  
[mhassell@postschell.com](mailto:mhassell@postschell.com)  
[lberkstresser@postschell.com](mailto:lberkstresser@postschell.com)

Kimberly A. Klock, Esq.  
Michael J. Shafer, Esq.  
PPL Service Corporation  
Two North Ninth St.  
Allentown, PA 18101  
[kklock@pplweb.com](mailto:kklock@pplweb.com)  
[mjshafer@pplweb.com](mailto:mjshafer@pplweb.com)

Aron J. Beatty, Esq.  
Christy M. Appleby, Esq.  
David T. Evrard, Esq.  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Fl.  
Harrisburg, PA 17101-1923  
[abeatty@paoca.org](mailto:abeatty@paoca.org)  
[cappleby@paoca.org](mailto:cappleby@paoca.org)  
[devrard@paocar.org](mailto:devrard@paocar.org)

Charles E. Thomas, III, Esquire  
Thomas, Niesen & Thomas, LLC  
212 Locust St., Suite 600  
Harrisburg, PA 17101  
[Cet3@tntlawfirm.com](mailto:Cet3@tntlawfirm.com)

Steven C. Gray, Esq.  
Office of Small Business Advocate  
300 North Second St., Suite 202  
Harrisburg, PA 17101  
[sgray@pa.gov](mailto:sgray@pa.gov)

Elizabeth Marx, Esq.  
John Sweet, Esq.  
Ria Pereira, Esq.  
Pennsylvania Utility Law Project  
118 Locust St.  
Harrisburg, PA 17101  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

Todd S. Stewart, Esquire  
Hawke, McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)

John F. Lushis, Jr., Esq.  
Norris McLaughlin, P.A.  
515 W. Hamilton Street, Suite 502  
Allentown, PA 18101  
[jlushis@norris-law.com](mailto:jlushis@norris-law.com)

James Laskey, Esq.  
Norris McLaughlin, P.A.  
400 Crossing Blvd., 8<sup>th</sup> Floor  
Bridgewater, NJ 08807  
[jaskey@norris-law.com](mailto:jaskey@norris-law.com)

Gina Miller, Esq.  
Bureau of Investigation & Enforcement  
PA Public Utility Commission  
PO Box 3265  
400 North St., 2<sup>nd</sup> Floor West  
Harrisburg, PA 17105-3265  
[ginmiller@pa.gov](mailto:ginmiller@pa.gov)

Kenneth L. Mickens, Esq.  
The Sustainable Energy Fund of Central  
Eastern Pennsylvania  
316 Yorkshire Drive  
Harrisburg, PA 17111  
[kmickens11@verizon.net](mailto:kmickens11@verizon.net)

Pamela Polacek, Esq.  
Adeolu A. Bakare, Esq.  
Jo-Anne Thompson, Esq.  
McNees, Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
[abakare@mcneeslaw.com](mailto:abakare@mcneeslaw.com)  
[ppolacek@mcneeslaw.com](mailto:ppolacek@mcneeslaw.com)  
[jthompson@mcneeslaw.com](mailto:jthompson@mcneeslaw.com)

Gregory L. Peterson, Esq.  
Kevin Blake, Esq.  
Thomas Puchner, Esq.  
Phillips Lytle LLP  
201 West Third St., Suite 305  
Jamestown, NY 14701-4907  
[gpeterson@phillipslytle.com](mailto:gpeterson@phillipslytle.com)  
[kblake@phillipslytle.com](mailto:kblake@phillipslytle.com)  
[tpuchner@phillipslytle.com](mailto:tpuchner@phillipslytle.com)

Derrick Price Williamson, Esq.  
Barry A. Naum, Esq.  
Spilman Thomas & Battle, PLLC  
1100 Bent Creek Blvd., Suite 101  
Mechanicsburg, PA 17050  
[dwilliamson@spilmanlaw.com](mailto:dwilliamson@spilmanlaw.com)  
[bnaum@spilmanlaw.com](mailto:bnaum@spilmanlaw.com)

Date: October 26, 2020



---

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 :

---

**EXCEPTIONS OF  
STARION ENERGY PA, INC.**

---

Deanne M. O'Dell, Esquire  
Attorney ID #81064  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
(717) 237-6000 (phone)  
(717) 237-6019 (fax)

Date: October 26, 2020

Attorneys for Starion Energy PA, Inc.

**TABLE OF CONTENTS**

**I. INTRODUCTION.....1**

**II. EXCEPTIONS.....4**

A. Exception No. 1: The RD Erroneously Overlooks Evidence Showing PPL’s SOP Proposals Would End The SOP For All Customers (R.D. at 31-33) .....4

1. EGSs Voluntarily Decide Whether Or Not To Participate In SOP Based On The Program Participation Requirements And The Opportunity To Retain The SOP Customer Upon SOP Contract Expiration.....5

2. Adopting PPL’s Proposal Will Fundamentally Alter One Of The Most Significant SOP Design Features Considered By EGSs, i.e. The Opportunity To Retain The SOP Customer Upon Contract Expiration .....5

3. A Total Collapse Of PPL’s SOP Due To A Lack Of EGS Participation Is Not In The Public Interest And Will Not Serve Customers Or The Competitive Market.....8

B. Exception No. 2: The RD Erroneously Overlooks Other Alternatives To Address Concerns About The SOP (COL ##20 and 21) .....9

1. EGSs Lack Real-Time, Current Contact Information For Their Customers Enrolled Via SOP .....10

2. Addressing The Lack Of Contact Information Provided To EGSs For SOP Enrollments Is A Better Approach To Ensure SOP Customers Receive Appropriate Information .....11

C. Exception No. 3: The RD Erroneously Concludes That PPL’s SOP Proposal Can Be Legally Adopted (RD at 31-32, COL # 20) .....13

1. Recommending Action On Basis Of EGS Post SOP Pricing Is An Illegal Regulation Of Generation Pricing .....13

2. Adopting PPL’s Proposal Is Antithetical To Competition Act And Will Have A Negative Impact On Competition.....14

**III. CONCLUSION .....17**

## I. INTRODUCTION

In this fifth default service proceeding of PPL Electric Utilities Corporation (“PPL”), PPL proposes an unprecedented change to its seven year old customer referral standard offer program (“SOP”) which, if adopted, will result in the end of its SOP program and constitute an unlawful reversal of decades of Commission precedent. (For clarity, Starion Energy PA, Inc., “Starion,” is only addressing SOP issues, not CAP-SOP or CAP shopping issues).<sup>1</sup> In her Recommended Decision (“RD”) Administrative Law Judge Elizabeth Barnes (“ALJ”) recommends that the Commission approve PPL’s following SOP proposals:

- Automatically transfer the SOP customers of electric generation suppliers (“EGSs”) to PPL’s default service upon expiration of the EGS SOP contract unless customer takes affirmative action;
- Permit PPL to engage in an outreach campaign three months prior to the end of the EGS SOP contract including calls, letters, emails and/or text messages “to discuss the options available to the customer;” and,
- Permit PPL to send notification thirty days prior to the expiration of the SOP contract informing the EGS SOP customer that he or she will be transferred to default service upon contract expiration.<sup>2</sup>

Starion, an EGS, intervened in this proceeding and provided the direct and surrebuttal testimony of Peter Muzsi to oppose PPL’s SOP proposals because adoption of them would leave Starion no choice but to question future participation in PPL’s SOP.<sup>3</sup> Mr. Muzsi also explained how PPL’s notice proposals would be more confusing for consumers<sup>4</sup> and offered another, less

---

<sup>1</sup> Starion did not address any issues related to shopping for PPL’s Customer Assistance Program (“CAP”) participants or PPL’s separate program specifically for CAP participants, CAP-SOP. As explained by Starion Witness Muzsi, “SOP and CAP-SOP are not the same programs” and SOP is not offered to low-income customers. Starion St. No. 1-SR at 9.

<sup>2</sup> RD at 34, 43, Ordering ¶ 3. *See also* PPL St. No. 4 at 13-14.

<sup>3</sup> Starion St. No. 1 at 2.

<sup>4</sup> Starion St. No. 1 at 12-13.

disruptive, alternative that could be adopted in lieu of PPL's proposal (i.e., asking customers enrolling in SOP if they consent to providing the SOP EGS their contact information).<sup>5</sup> In its Main and Reply Briefs, Starion addressed the unlawfulness of PPL's proposals. Because the RD recommends adoption of PPL's SOP proposals without modification, Starion submits these Exceptions to urge the Commission to reject PPL's SOP proposals.

First, as explained in Exception No. 1, a core assumption underlying the recommendation of the ALJ to adopt PPL's proposal is that the SOP will continue. However, this assumption is erroneous. Based on the unrefuted record, adoption of PPL's SOP proposals will result in the end of PPL's SOP program. The RD does not consider this possibility and the negative competitive retail market effects that would occur from the ending an important program that has allowed both customers and EGSs to participate in Pennsylvania market. A total collapse of PPL's SOP due to a lack of EGS participation is not in the public interest particularly in light of the fact that it offers a contactless way for EGSs to enroll customers thereby furthering the desire of the Commission and Commonwealth that suppliers minimize social contact in response to the COVID-19 pandemic.<sup>6</sup>

Second, as explained more fully in Exception No. 2, the RD errs by failing to consider other, less objectionable solutions to the identified concerns including Starion's proposal that PPL be required to ask the customer being enrolled in SOP for permission to share his or her information with the SOP EGS. The RD rejects this proposal with no analysis even though it is a

---

<sup>5</sup> Starion St. No. 1-SR at 4-6, Starion Reply Brief ("RB") at 3.

<sup>6</sup> *Supplier Door-to-Door and In-Person Marketing Moratorium; Proclamation of Disaster Emergency – COVID-19: Interstate Gas Supply, Inc. Petition for Rehearing and/or Reconsideration*, Docket No. M-2020-3019254, Order entered August 27, 2020 at 16.

reasonable approach that is narrowly tailored to address concerns about SOP customers not receiving information about the expiration of the SOP contract.

Third, as explained more fully in Exception No. 3, the basis for recommending adoption of PPL's SOP proposals is rooted in the view that prices EGSs offer post SOP contract are too high. Because the Commission lacks authority to regulate pricing and this proposal is based on a reaction to EGS pricing, it is unlawful and cannot be adopted. Moreover, at its core, the SOP proposal creates an automatic process whereby consumers who have elected to "try" the competitive market via SOP are automatically returned to PPL's default service if they do not take affirmative action. This reverses decades of Commission precedent permitting EGS contracts to continue upon expiration so long as proper notice is provided. Moreover, by returning these consumers to default service, PPL is given a significant competitive advantage over all the EGSs in the market.

While Starion acknowledges the ultimate good faith intent of the ALJ in recommending PPL's SOP proposals to assist consumers regarding the price they pay for electricity service, the actual result of adopting the RD will significantly harm the competitive market and, ultimately, consumers. The SOP program will likely no longer be available due to the lack of EGS participation denying consumers of the opportunity for a guaranteed 7% savings off the PTC at contract formation and held for 12 months. The unavailability of the SOP will also impact the ability of some EGSs to serve residential markets in PPL's service territory due to higher acquisition costs. A lack of EGSs further hurts consumers by taking away their competitive choices and relegating them back to the historical monopoly provider – a result that is the



complete opposite of what was intended by the Legislature through the Electricity Generation Customer Choice and Competition Act (“Competition Act”).<sup>7</sup>

For all these reasons, Starion urges the Commission to grant these exceptions and deny the recommendation to approve PPL’s SOP proposals.

## **II. EXCEPTIONS**

### **A. Exception No. 1: The RD Erroneously Overlooks Evidence Showing PPL’s SOP Proposals Would End The SOP For All Customers (R.D. at 31-33)**

Setting aside Starion’s strong disagreement that PPL’s proposals are either necessary or lawful (as discussed more fully in Exceptions 2 and 3 below), the RD is based on the assumption that the SOP will continue even with adoption of PPL’s SOP proposals. This is evident in several places throughout the RD. For example, the RD states that “the SOP will continue to be offered, with the same discount, to encourage customers to try the competitive market.”<sup>8</sup> Further, the RD states that “the SOP will remain a voluntary program after PPL Electric’s modifications are made” and EGSs will be free to offer their SOP customers “any price” they desire after expiration of the SOP contract.<sup>9</sup> Finally, the RD states that PPL’s proposals are “consistent with Starion’s statement of the purpose of the SOP: to encourage customers to ‘try’ the competitive market so that they will continue to participate in the competitive market after expiration of the SOP contract.”<sup>10</sup> The RD errs by assuming that SOP will continue with the adoption of PPL’s SOP proposals and must be rejected.

---

<sup>7</sup> 66 Pa. C.S. §§ 2801-2812.

<sup>8</sup> RD at 33.

<sup>9</sup> RD at 31.

<sup>10</sup> RD at 32.

**1. EGSs Voluntarily Decide Whether Or Not To Participate In SOP Based On The Program Participation Requirements And The Opportunity To Retain The SOP Customer Upon SOP Contract Expiration**

At no point does the RD acknowledge or recognize that EGSs' voluntary participation in the SOP is absolutely necessary for the SOP to continue to operate. As explained by Starion and seven other EGSs in this proceeding, EGSs must balance several factors in determining whether or not to participate in the SOP including: (1) the amount of the customer referral fee paid to PPL; (2) the pricing requirements for the SOP contract (initially 7% below PPL's PTC and to be held for 12-months regardless of changing market conditions); and, (3) the opportunity to retain the SOP customer at the end of the SOP contract term.<sup>11</sup> According to the Commission's statistics, as of August 31, 2020, an average of fourteen EGSs have participated to serve PPL residential customers and an average of seven EGSs have participated to serve PPL small commercial customers since its introduction in 2013.<sup>12</sup> As "there has never been a period without a participating [EGS] in the SOP in the six-year history of the program,"<sup>13</sup> a reasonable conclusion can be drawn that the current design of PPL's SOP program appropriately incentivizes EGSs to participate.

**2. Adopting PPL's Proposal Will Fundamentally Alter One Of The Most Significant SOP Design Features Considered By EGSs, i.e. The Opportunity To Retain The SOP Customer Upon Contract Expiration**

Adoption of PPL's SOP proposal will negatively impact the opportunity for the EGS to retain the SOP customer at the end of the SOP contract term. PPL's proposal is opposite of the Commission's long established rule that EGSs are legally permitted to convert an existing

---

<sup>11</sup> Starion Main Brief ("MB") at 11, citing Starion St. No. 1-SR at 2; EGS Parties St. No. 1 at 17-18.

<sup>12</sup> See [https://www.papowerswitch.com/media/bcjj2meu/edc\\_sop\\_stats083120.pdf](https://www.papowerswitch.com/media/bcjj2meu/edc_sop_stats083120.pdf)

<sup>13</sup> Starion MB at 11 citing PPL St. No. 3-R at 13.

contract to another EGS contract without action on the part of the customer (so long as appropriate notice is given).<sup>14</sup> Moreover, PPL’s proposal would create significant customer confusion.<sup>15</sup> As illustrated in the table below, PPL proposes to contact the EGS’s SOP customer before the EGS has presented the post SOP contract offer to the customer. Moreover, PPL’s proposal would result in two conflicting notices 30 days prior to contract expiration – one notifying the SOP customer that he or she will be returned to default service and the other notifying the SOP customer of the EGS offers and what will happen following contract expiration.

	<b>Purpose</b>	<b>Timing</b>	<b>Sample Timeline</b>
<b>Contract Initiation Date</b>	Enroll in SOP	Upon PPL enrollment	6/1/2021
<b>PPL Proposed Outreach Campaign (calls, letters, emails and/or text messages)</b>	To discuss options available to the customer	To begin 90 days prior to expiration	3/3/2022 (start date)
<b>EGS Initial Notice</b>	Notice of upcoming proposed change in terms of service & when follow-up options notice will be issued with details regarding the change	45-60 days prior to contract expiration pursuant to 52 Pa Code 54.10(1)	Between 4/2/2022 and 4/17/2022
<b>EGS Options Notice</b>	Renewal pricing, how to exercise options, and what occurs if customer does not respond	30 days prior to contract expiration pursuant to 52 Pa. Code Sec 54.10(2)	5/2/2022
<b>PPL Notification</b>	Notice of Return to Default Service	30 days prior to contract expiration	5/2/2022
<b>SOP Contract Expiration</b>	End of SOP contract	12 months after initiation	6/1/2022

---

<sup>14</sup> Starion MB at 9-10, 16-18 citing 52 Pa. Code § 54.10 and *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Docket No. L-2014-2409385, Final-Omitted Rulemaking Order entered April 3, 2014 at 38.

<sup>15</sup> Starion St. No. 1 at 12-13.

Adopting PPL's proposal makes it more difficult for consumers to remain in the competitive market upon SOP contract expiration because – for SOP contracts only – EGS customers will have to take affirmative action to remain with the EGS. This is not the case for any other EGS contract.<sup>16</sup> Given that the goal of the SOP is to introduce consumers to the competitive market, such a requirement undercuts the very purpose for which the SOP was created and will further draw into question whether EGSs will elect to participate.

While adopting PPL's SOP proposal would negatively impact the opportunity for EGSs to retain the SOP customer at the end of the SOP contract term, no changes were suggested for the other two EGS program participation requirements. Thus, as a condition of participating in the SOP, EGSs would still be required to: (1) pay PPL a \$28 fee for each customer referred; and, (2) offer the SOP customer a price that is 7% off the PTC at the time of enrollment and maintained for the 12-month term of the contract regardless of market conditions. EGSs will have to weigh whether these program participation requirements are still worthwhile given the reduced likelihood that the EGS will be able to serve the SOP customer at the end of the SOP contract term.

On this point, the unrefuted testimony from eight EGSs participating in this proceeding makes clear that EGSs will likely not judge the revised SOP terms as attractive enough to justify their future voluntary participation in PPL's SOP. More specifically, Starion Witness Muzsi testified that PPL's proposal would cause Starion to reconsider future participation in PPL's

---

<sup>16</sup> The Commission has consistently maintained that “the intent of the competitive market is to encourage customers to shop for their retail electricity supply” and, therefore, it is not “appropriate for a customer to be reverted to default service should that customer fail to respond to either of the two EGS-provided notices.” See Starion MB at 9-10 citing *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2013-2302074, Opinion and Order entered January 24, 2013 at 164-171 (“*PPL DSP II Final Order*”).

SOP.<sup>17</sup> Similarly, seven other EGSs presented testimony in this proceeding explaining that PPL’s proposed SOP changes “would cause a huge disturbance. . . which could cause EGSs to abandon the [SOP] entirely.”<sup>18</sup> None of this testimony was refuted by other parties in the proceeding nor addressed in the RD. With no EGSs participating in the RD recommended redesigned PPL SOP, there will be no SOP available to consumers in PPL’s service territory.

**3. A Total Collapse Of PPL’s SOP Due To A Lack Of EGS Participation Is Not In The Public Interest And Will Not Serve Customers Or The Competitive Market**

As explained more fully in Starion’s Main Brief, the Commission has recognized the value of the SOP since 2007 and embarked upon a nearly three year process to develop an appropriate structure for it.<sup>19</sup> The Commission has dedicated a specific page on its [PaPowerSwitch](https://www.papowerswitch.com) website to provide information to Pennsylvania consumers about the SOP and also maintains an up-to-date chart of statistics for the various EDC SOP programs.<sup>20</sup> Over the years, if one of the EDC’s SOP programs does not appear to be functioning well, the Commission has taken the initiative to further study the specific EDC’s SOP and direct the changes necessary to improve the SOP being offered.<sup>21</sup>

---

<sup>17</sup> Starion MB at 11 citing Starion St. No. 1 at 4-5.

<sup>18</sup> EGS Parties’ St. No. 1 at 18.

<sup>19</sup> Starion MB at 6-8.

<sup>20</sup> <https://www.papowerswitch.com/about-switching-electricity/standard-offer-program/#>

<sup>21</sup> For example, the Commission most recently referred the SOP of FirstEnergy to a collaborative process lead by the Office of Consumer Market Oversight (“OCMO”) for the purpose of addressing “the scripting and training materials” of FirstEnergy’s SOP to: “(a) ensure that such scripting and training materials will provide sufficient consumer education/protections and disclaimers to customers that are not misleading, and (b) to determine the impacts that such scripting and training materials may have on customer enrollment in the program as well as any other competitive concerns.” *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 February 28, 2019 at 7.

For all these reasons, adopting the RD's recommendation to change a core design element of PPL's SOP will have a detrimental impact on the future of SOP in PPL's service territory in contradiction to the Commission's expressed desires over the years. Furthermore, in light of the current COVID-19 pandemic, the Commission has encouraged the use of sales channels that minimize social contact. As a contactless enrollment sales channel, SOP furthers this goal and removal of it from PPL's service territory would be an unfortunate result of adopting the RD. Starion urges the Commission to reject the RD's recommendation to approve PPL's SOP proposals. As discussed further in Exception No. 2, the record presented other options to address the concerns expressed by PPL which would not result in the demise of the SOP program. While Starion does not agree that the problem identified by PPL and accepted in the RD either exists or needs correction, Starion does not oppose reasonable SOP program design changes that actually enhance the SOP for customers while still encouraging EGSs to participate.

**B. Exception No. 2: The RD Erroneously Overlooks Other Alternatives To Address Concerns About The SOP (COL ##20 and 21)**

While the RD agrees with PPL's concern that "a meaningful number of SOP customers are not making affirmative shopping decisions, and as a result are passively rolling onto contracts with substantial rate increases,"<sup>22</sup> the RD dismisses without discussion alternative solutions.<sup>23</sup> Accordingly, the RD errs by failing to consider other, less objectionable solutions to the concerns identified in this proceeding given the likely negative impact on EGS participation

---

<sup>22</sup> RD at 32.

<sup>23</sup> RD at 42, COL # 21.

in PPL's redesigned SOP (as explained in Exception 1) and the unlawfulness of the recommendation (as explained in Exception 3).

**1. EGSs Lack Real-Time, Current Contact Information For Their Customers Enrolled Via SOP**

Starion Witness Muzsi explained that a root cause of PPL's identified concern regarding customer actions at the end of the SOP contract can be directly linked to EGSs' lack of real-time, current contact information for their SOP customer. The only contact information EGSs receive from PPL for customers enrolled via the SOP is the billing address. Thus, the only way an EGS could seek more real-time, current contact information from its SOP customer is by sending a request via the mail and asking the customer to provide his or her phone number or email address. Mr. Muzsi explained why this effort, notwithstanding the extra time and effort to undertake it, would likely be unsuccessful. He also explained that this is very different from a customer acquired by Starion via other means because Starion is in direct communication with the customer and can acquire the contact information such as a telephone number and e-mail address at the time of enrollment.<sup>24</sup> Given this, Starion suggested that an alternate way of addressing PPL's stated concerns would be for PPL to ask the customer being enrolled in SOP for permission to share his or her information with the SOP EGS.<sup>25</sup>

---

<sup>24</sup> Starion St. No. 1-SR at 5-6.

<sup>25</sup> Starion St. No. 1-SR at 6.

## 2. Addressing The Lack Of Contact Information Provided To EGSs For SOP Enrollments Is A Better Approach To Ensure SOP Customers Receive Appropriate Information

While PPL “strongly opposed” Starion’s suggestion claiming that doing so would “violate distribution customers’ expectations of privacy,”<sup>26</sup> the RD simply includes the directive in Ordering Paragraph #4 that PPL “is not required to provide an [EGS] with the telephone numbers and e-mail addresses (if available) of [SOP] customers to the [EGS] serving the customer.”<sup>27</sup> Notwithstanding the lack of analysis about why this alternative approach was rejected, Starion submits that it is a reasonable approach for the Commission to consider if it agrees that the concern identified by PPL (and accepted by the RD) needs to be addressed.

First, the SOP customer is the EGS’s customer. The EGS has paid PPL a referral fee, has agreed to specific contract terms as part of its participation in SOP and is providing the supply service to the referred SOP customer. While the EGS acquired the customer via the SOP, that fact is of no import. The customer is the EGS’s customer and the EGS is required to follow all Commission regulations and requirements regarding the customer.

Second, the Commission has well-established that EGSs have the right to access information about their customers. 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>28</sup> To further ensure that customers are aware of EGSs accessing their data, the Commission added a new requirement that EGSs

---

<sup>26</sup> PPL MB at 24. Starion responded to PPL’s claims in its RB at 2-5.

<sup>27</sup> RD at 43, Ordering ¶ 4.

<sup>28</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).



inform their customers of this as part of the customer disclosure statement.<sup>29</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 and it is wholly inappropriate to permit PPL to act as the ultimate gatekeeper of this information.

Third, 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 ensures that the customer (not PPL or the EGS) is given the right to decide whether or not to share his or her information.

In Starion's view, consideration of this approach would be a much more reasonable way to address the concerns identified by PPL and accepted by the ALJ because this approach is one that would respect the current functionality of the SOP while attempting to implement a process to make it better. Thus, in sum, the RD does not specifically analyze why PPL's proposed solution is narrowly tailored to address the identified concern nor does it analyze why alternative proposals on the record should be rejected. For these reasons, Starion urges the Commission to reject the recommendation that EGSs be denied access to information about their SOP customers.

---

<sup>29</sup> 52 Pa. Code § 54(k). See also *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.

C. **Exception No. 3: The RD Erroneously Concludes That PPL’s SOP Proposal Can Be Legally Adopted (RD at 31-32, COL # 20)**

After explaining her agreement with PPL’s identified concern, the RD largely focuses on reasons why adopting PPL’s proposal to return SOP customers to default service at contract expiration is not unlawful.

**1. Recommending Action On Basis of EGS Post SOP Pricing Is An Illegal Regulation Of Generation Pricing**

Regarding claims that PPL’s proposal is an illegal regulation of EGS pricing, the RD explains that “no aspect of PPL’s proposal seeks to control what prices EGSs may offer to customers post-SOP.”<sup>30</sup> However, as the RD makes abundantly clear, the whole reason for recommending adoption of PPL’s proposal is based on a concern about the specific prices EGSs are charging SOP customers at the expiration of their SOP contract.<sup>31</sup> Notwithstanding that even a return to default service will likely result in a price increase for the SOP customer whose SOP price was initially set at a 7% discount off the PTC, the RD finds action must be taken to “protect” SOP customers from EGS pricing. Thus, the whole purpose of the RD is rooted in an analysis of EGS pricing and a desire to “protect” SOP customers from EGS prices. The fact that the proposal does not specifically dictate what EGSs may or may not charge inside or outside the SOP is irrelevant to the point that the purpose for the recommendation is based on EGS pricing which the Commission lacks jurisdiction to regulate.<sup>32</sup>

---

<sup>30</sup> RD at 31.

<sup>31</sup> RD at 28 (“I find 20% of the customers are still on roll over contracts, and are paying excessively high rates...”); 29 (“supplier prices. . . cannot be justified since those prices are far in excess of the PTC”), 29 (“PPL is handling numerous complaints from thousands of customers unknowingly being rolled into new contracts with rates well above the PTC.”); 32 (“a meaningful number of SOP customers. . . are passively rolling onto contracts with substantial rate increases.”)

<sup>32</sup> Starion MB at 12-13 citing 66 Pa. C.S. §§2802(5), 2806(a), 1301.

## 2. Adopting PPL’s Proposal Is Antithetical To Competition Act And Will Have A Negative Impact On Competition

The Competition Act directs the Commission to create a competitive market for the generation of electricity because the “overarching goal of the [Competition] Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers.”<sup>33</sup> The purpose of restructuring is to ensure that “all customers of electric distribution companies in this Commonwealth shall have the opportunity to purchase electricity from their choice of [EGSs].”<sup>34</sup> The Competition Act requires that EDCs provide EGSs nondiscriminatory access to the EDC’s transmission and distribution system on “rates, terms of access and conditions that are comparable to the utilities own use of its system.”<sup>35</sup> The Competition Act also empowers the Commission to take steps to prevent anticompetitive or discriminatory conduct and to investigate “the impact on the proper functioning of a fully competitive retail electricity market. . . anticompetitive or discriminatory conduct affecting the retail distribution of electricity.”<sup>36</sup> As such, the Commission may not approve proposals which are anticompetitive or discriminatory and will have a negative impact on competition.

In response to concerns that PPL’s proposals are anticompetitive and discriminatory in violation of the Competition Act, the RD finds “nothing anti-competitive or discriminatory” about PPL’s proposal to automatically return SOP customers to default service. The ALJ further reasons that: (1) the return to SOP would be an authorized program design and the Commission’s

---

<sup>33</sup> *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm’n*, 120 A.3d at 1101 (Pa. Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016). (“CAUSE-PA CAP Shopping Order”); 66 Pa.C.S. § 2802(13).

<sup>34</sup> 66 Pa.C.S. § 2806(a).

<sup>35</sup> 66 Pa. C.S. § 2803; 66 Pa. C.S. § 2804 (6).

<sup>36</sup> 66 Pa. C.S. §§ 2811(a) and (b).

regulations at 52 Pa. Code 57.172 permit the Commission to implement such a requirement;<sup>37</sup> (2) PPL has no incentive to have these customers returned to default service and will “encourage smart shopping and hopefully a more positive shopping experience;”<sup>38</sup> (3) PPL represented that its intended (but not yet developed) “educational” materials will be focused on “encouraging customers to carefully evaluate their choices.”<sup>39</sup>

All of these arguments, however, miss the fundamental point that the Competition Act charges the Commission with fostering the development of a competitive market and ensuring that PPL – as the historical monopoly provider – is not provided competitive advantages over EGSs or that PPL’s default service is elevated to a superior position relative to the competitive market. And, yet, that is exactly what will happen if PPL’s proposals are adopted.

First, adopting PPL’s proposal automatically removes customers from the competitive market to return them to default service provided by PPL. Given its historical role as monopoly provider and the fact that PPL continues to serve nearly 60% of residential customers,<sup>40</sup> a mechanism automatically returning EGS customers (who were enrolled via a competitive market program) to PPL provides PPL a significant competitive advantage relative to all other EGSs in the market and creates a significant disincentive for EGSs to participate in the SOP thus eroding the competitive market options available for consumers.

Second, the result of adopting PPL’s proposal is to elevate default service over the competitive market. By using PPL’s PTC as the benchmark to decide what is appropriate

---

<sup>37</sup> RD at 31-32.

<sup>38</sup> RD at 32-33.

<sup>39</sup> RD at 33-34.

<sup>40</sup> Information current through September 2020 according to the Commission’s PaPowerSwitch Monthly Update available at: [https://www.papowerswitch.com/media/ef3dku1i/paps\\_shoppingnumbers093020.pdf](https://www.papowerswitch.com/media/ef3dku1i/paps_shoppingnumbers093020.pdf).

generation pricing (notwithstanding the fact that the Commission has no authority to regulate generation pricing), the message is being sent that PPL's default service is superior to EGS market pricing. This illegally favors default service over competitive service. Attempting to justify the proposal as helping to show customers how to shop "smart" only further proves the illegality of the proposal because shopping "smart" in this context means "not paying more than PPL's PTC." Again, the message being sent is that PPL's default service is the superior product.

PPL's motives are irrelevant to the issue of whether PPL is promoting default service over competitive alternatives.<sup>41</sup> PPL's proposed outreach to EGS customers relies on customer information to which it has access only due to its role as the EDC (access to which it is actively seeking to deny EGSs). PPL's proposed timeline of outreach to EGS SOP customers involves contacting them in advance of knowing what offers the EGS will make available to the SOP customer upon contract expiration. Thus, PPL can only be "educating" customers about returning to its default service product.<sup>42</sup> This fact is further verified by PPL's stated purpose here to protect it from reputational harm.<sup>43</sup>

In sum, automatic mechanisms returning customers who have shopped back to PPL's default service are confusing, send the wrong message and do not further either a "smarter" or more positive shopping experience. On the contrary, they unlawfully elevate PPL's default service product in relation to all other EGS products in violation of the requirements of the Competition Act. Ultimately, adopting PPL's proposal will harm the competitive market and, as

---

<sup>41</sup> Starion MB at 23-25 citing *The Mid-Atlantic Power Supply Ass'n v. PaPUC*, 755 A.2d 723-24 (Pa. Commw. Ct. 2000).

<sup>42</sup> Starion MB at 21 citing Starion St. No. 1 at 12.

<sup>43</sup> PPL St. No. 4 at 13-14.

a result, consumers. Consequently, Starion urges the Commission to grant these exceptions and reject the recommendations of the RD on this issue.

### III. CONCLUSION

For the reasons discussed above, Starion urges the Commission to grant these Exceptions and reject the recommendation of the ALJ to adopt PPL's SOP proposals.

Respectfully submitted,



---

Deanne M. O'Dell, Esquire  
Attorney ID #81064  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
(717) 237-6000 (phone)  
(717) 237-6019 (fax)

Date: October 26, 2020

Attorneys for Starion Energy PA, Inc.