

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company for : P-2020-3019522
Approval of Its Default Service Plan for the Period :
From June 1, 2021 through May 31, 2025 :

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

For the reasons stated herein, this Decision denies the Petition to Intervene filed by Solar United Neighbors of Pennsylvania (SUN-PA) at this docket. A separate Prehearing Order has been issued at this docket with respect to the procedural rules and litigation schedule for this proceeding.

HISTORY OF THE PROCEEDINGS

On April 20, 2020, Duquesne Light Company (Duquesne Light or Company) filed the above-captioned Petition with the Pennsylvania Public Utility Commission (Commission) requesting approval for a Default Service Plan for the period of June 1, 2021 through May 31, 2025 (DSP IX or Default Service Plan).

In the Default Service Plan, Duquesne Light proposes to continue separate default supply procurements for: (1) Residential and Lighting customers, (2) Small Commercial and Industrial (C&I) customers, (3) Medium C&I customers with demands under 200 kW (Medium C&I <200kW), and (4) Medium C&I customers with demands equal to or greater than 200 kW and Large C&I customers (collectively, HPS-Eligible). Duquesne Light proposes to procure supplies for Residential and Lighting and Small C&I customers through the combination of twelve (12) and

twenty-four (24) month fixed price, full requirements, laddered contracts. Duquesne Light will continue to supply Medium C&I <200kW default service customers through fixed-price full requirements supply contracts with three-month terms from third-party suppliers with no laddering. Duquesne Light proposes to continue to procure supply for HPS-Eligible default service customers through the day-ahead PJM energy market prices. Duquesne Light proposes to continue the current structure and administration for HPS customers, to conduct an RFP to supply HPS customers, and to preserve the demand threshold for HPS at ≥ 200 kW.

In the Default Service Plan, Duquesne Light also proposes to (1) create an Electric Vehicle Time-of-Use Pilot Program (EV-TOU) for Residential, Small C&I and Medium C&I <200kW customers who own or lease an EV or who operate EV charging infrastructure at the service location; (2) allow customers participating in the Company's Customer Assistance Program (CAP) to purchase supply from Electric Generation Suppliers (EGSs), subject to certain protections (CAP Shopping), provided that there are sufficient EGSs that are willing to serve CAP customers; (3) use a third-party vendor to administer the Company's Standard Offer Customer Referral Program (SOP); and (4) enter into a long-term Solar Power Purchase Agreement to support a utility-scale solar project in Pennsylvania, preferably in Duquesne Light's service area.

On April 27, 2020, a Call-In Telephone Prehearing Conference Notice was electronically served. On April 30, 2020, the undersigned issued a Prehearing Conference Order scheduling a Telephonic Initial Prehearing Conference on Friday, June 12, 2020, at 10:00 a.m.

On April 30, 2020, Calpine Retail Holdings, LLC (Calpine) filed a Petition to Intervene.

On April 30, 2020, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), filed a Petition to Intervene through its counsel at the Pennsylvania Utility Law Project.

On May 1, 2020, Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc., Vistra Energy Corp., Engie Resources LLC, WGL Energy, and Direct Energy Services, LLC (collectively, EGS Parties), filed a Petition to Intervene.

On May 9, 2020, notice of the filing of the Petition and of the scheduled prehearing conference was published in the Pennsylvania Bulletin. 50 *Pa. Bulletin* 2508.

On May 20, 2020, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Answer.

On May 22, 2020, the Office of Consumer Advocate (OCA) filed a Notice of Intervention and Answer.

On June 2, Calpine filed a Motion for Admission *Pro Hac Vice* of James H. Laskey.

On June 3, 2020, StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania (collectively, StateWise) filed a Petition to Intervene and Motions for Admission *Pro Hac Vice* of Thomas F. Pucher and Kevin C. Blake.

On June 5, 2020, the following entities filed Petitions to Intervene: MAREC Action (MAREC); ChargePoint, Inc.; the Natural Resources Defense Council (NRDC); and Solar United Neighbors of Pennsylvania (SUN-PA). NRDC also filed an Answer on June 5, 2020.

On June 9, 2020, the Company filed an Answer to the Petition to Intervene of SUN-PA requesting that the petition be denied because SUN-PA is not represented by counsel and because the petition did not include a certificate of service and is procedurally deficient. Alternatively, the Company requested that SUN-PA retain counsel and file a notice of appearance no later than June 15, 2020. Also, on June 9, 2020, the Commission's Bureau of Investigation & Enforcement (I&E) filed a Notice of Appearance and Prehearing Memorandum.

A prehearing conference was held as scheduled on June 12, 2020. Duquesne Light, I&E, OCA, OSBA, CAUSE-PA, Calpine, EGS Parties, StateWise, MAREC, ChargePoint, Inc., and NRDC were represented at the conference. SUN-PA was not represented at the conference and no representative has entered an appearance on behalf of SUN-PA in this proceeding. On June 23, 2020, a Prehearing Order memorializing the matters decided by the undersigned and agreed upon by the parties attending the conference on June 12, 2020, was issued.

FINDINGS OF FACT

1. On April 20, 2020, Duquesne Light filed the above-captioned Petition requesting approval for a Default Service Plan for the period of June 1, 2021 through May 31, 2025.
2. On June 5, 2020, SUN-PA filed a Petition to Intervene averring that “[w]ith more than 4000 members and supporters in Pennsylvania (and nearly 70,000 nationwide), SUN-PA is a nonprofit organization that advocates for the interests of residential and small commercial solar customer-generators across the Commonwealth of Pennsylvania.” Petition to Intervene ¶1.
3. SUN-PA’s Petition to Intervene was signed by Henry McKay, Program Director.
4. SUN-PA’s Petition to Intervene did not include a certificate of service.
5. On June 9, 2020, the Company filed an Answer to the Petition to Intervene of SUN-PA requesting that the petition be denied because SUN-PA is not represented by counsel and because the petition did not include a certificate of service and is procedurally deficient. Alternatively, the Company requested that SUN-PA retain counsel and file a notice of appearance no later than June 15, 2020.
6. SUN-PA did not file a Prehearing Memorandum in this proceeding.

7. No representative of SUN-PA appeared at the prehearing conference.
8. The Prehearing Order was served on June 23, 2020.
9. No representative has entered an appearance on behalf of SUN-PA in this proceeding.

DISCUSSION

The Commission's Rules of Practice and Procedure permit petitions to intervene. 52 Pa.Code §§ 5.71-5.76. The provision at 52 Pa.Code § 5.72 governs which persons or entities are eligible to intervene in a proceeding and states as follows:

§ 5.72. Eligibility to intervene.

(a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

(b) *Commonwealth.* The Commonwealth or an officer or agency thereof may intervene as of right in a proceeding subject to subsection (a) (1)-(3).

52 Pa.Code § 5.72.

Allowance of intervention is a matter within the discretion of the Commission. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 33 A.2d 641 (Pa. Super. 1943); *N.A.A.C.P., Inc. v. Pa. Pub. Util. Comm'n*, 290 A.2d 704 (Pa. Cmwlth. 1972).

Petitioner SUN-PA claims that “[w]ith more than 4000 members and supporters in Pennsylvania (and nearly 70,000 nationwide), SUN-PA is a nonprofit organization that advocates for the interests of residential and small commercial solar customer-generators across the Commonwealth of Pennsylvania.” Petition to Intervene ¶1. SUN-PA states that it is “particularly interested in ensuring that net metering regulations provide fair compensation to solar customer-generators that reflect the benefits that distributed solar generation provides to the entire energy system.” Petition to Intervene ¶1.

Pursuant to the Commission’s regulations at 52 Pa.Code §§ 1.21, 1.22, persons other than individuals must be represented by an attorney or certified legal intern in adversarial proceedings, such as this proceeding.

The Petition to Intervene filed by SUN-PA lacks a Certificate of Service as required under 52 Pa.Code § 5.75(a).

SUN-PA’s Petition to Intervene is denied in the ordering paragraphs to follow. The organization is not represented by counsel in this proceeding. No Prehearing Memorandum was filed, and no one from the organization attended the Prehearing Conference on June 12, 2020. Consequently, SUN-PA has failed to establish its eligibility to intervene in this proceeding pursuant to 52 Pa.Code § 5.72.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over Complainant and Respondent in this proceeding. 66 Pa.C.S. § 701.

2. The Commission's Rules of Practice and Procedure permit Petitions to Intervene. 52 Pa.Code §§ 5.71-5.76.

3. The provision at 52 Pa.Code § 5.72 governs which persons or entities are eligible to intervene in a proceeding. 52 Pa.Code § 5.72.

4. Allowance of intervention is a matter within the discretion of the Commission. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 33 A.2d 641 (Pa. Super. 1943); *N.A.A.C.P., Inc. v. Pa. Pub. Util. Comm'n*, 290 A.2d 704 (Pa. Cmwlt. 1972).

5. To demonstrate eligibility to intervene, a petitioner must show that it has an interest in the proceeding which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission, or that petitioner has an interest of such a nature that participation may be in the public interest. 52 Pa.Code § 5.72(a)(2)(3).

6. Petitioner Solar United Neighbors of Pennsylvania has not shown that it has an interest in the proceeding which may be directly affected and which is not adequately represented by existing participants, and as to which the Petitioner may be bound by the action of the Commission, or that petitioner has an interest of such a nature that participation may be in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition to Intervene filed by Solar United Neighbors of Pennsylvania at this docket is denied.

Date: July 2, 2020

/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge