STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on August 2, 2017

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman, dissenting
James S. Alesi

CASE 15-M-0127 - In the Matter of Eligibility Criteria for Energy Service Companies.

CASE 12-M-0476 - Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy Markets in New York State.

CASE 98-M-1343 - In the Matter of Retail Access Business Rules.

ORDER CONCERNING INTERLOCUTORY APPEAL

(Issued and Effective August 3, 2017)

BY THE COMMISSION:

INTRODUCTION

This order concerns an interlocutory appeal by the Retail Energy Supply Association (RESA) and Direct Energy Services, LLC (Direct Energy) (together, Appellants) seeking to halt the pending evidentiary hearing phase of these proceedings, or at a minimum, to curtail the scope of these proceedings to exclude issues and discovery relating to large commercial and industrial (C&I) customers and Energy Service Company (ESCO) profitability. Specifically, Appellants challenge the May 15,

2017 Ruling[1] in these proceedings of the presiding administrative law judges that declined to hold the evidentiary phase in abeyance and the May 23, 2017 Ruling[2] declining to limit the scope of discovery in the proceedings to exclude the C&I and ESCO profitability information. By this order, the Commission denies the petition for interlocutory review thereby upholding the two rulings, and also affirms that the pending evidentiary hearings are authorized by the Commission and are entirely appropriate and necessary to ensure a full record in these proceedings given the nature of the matters under consideration.

BACKGROUND

As part of the pending case investigating the retail energy markets,[3] on December 2, 2016, the Secretary to the Commission issued a Notice of Evidentiary and Collaborative Tracks and Deadline for Initial Testimony and Exhibits (December 2, 2016 Notice)[4] establishing a process to develop an evidentiary record. In it, two separate tracks were established. Track I contemplated an evidentiary hearing with the attendant testimony and exhibits to consider (a) whether ESCOs should be completely prohibited from serving their current products to mass-market customers; and (b) whether the

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[1] Case 15-M-0127 et al., Eligibility Criteria for Energy Service Companies, Ruling Denying Motion to Hold Proceedings in Abeyance (issued May 15, 2017).

[2] Case 15-M-0127 et al., Supra, Ruling on Motion to Limit Scope of Proceedings (issued May 23, 2017).

[3] Cases 12-M-0476 et al., Residential and Small Non-residential Retail Energy Markets, Order Taking Actions to Improve the Residential and Small Nonresidential Retail Access Markets (issued February 25, 2014) (Retail Markets Order); and Order Resetting Retail Energy Markets and Establishing Further Process (issued February 23, 2016) (Reset Order).

[4] Case 15-M-0127 et al., supra, Notice of Evidentiary and Collaborative Tracks and Deadline for Initial Testimony and Exhibits (issued December 2, 2016)(December 2, 2016 Notice).

regulatory regime, rules and Uniform Business Practices applicable to ESCOs need to be modified to implement such a prohibition, to provide sufficient additional guidance as to acceptable rates and practices of ESCOs, or to create enforcement mechanisms to deter customer abuses and overcharging, including whether the Commission decision not to subject ESCOs to Article 4 of the Public Service Law should be revisited. Track II described a collaborative effort to consider whether new ESCO rules and products can be developed that would provide sufficient real value to mass-market customers such that new products could be provided to them by ESCOs in the future in a manner that would ensure just and reasonable rates.[5] Administrative Law Judges were assigned to the proceeding and, on February 8, 2017, after a procedural conference, issued a Ruling on Scheduling and Procedure establishing the schedule and providing for the filing of testimony.

RESA's Motion to Suspend Proceedings and Limit Scope & Party Responses

On April 12, 2017, the Retail Energy Supply Association (RESA) filed a motion seeking, in part, to suspend or hold in abeyance the evidentiary and collaborative track because "they are being conducted pursuant to a Notice that exceeds the authority of the issuing party, the Secretary of the Commission."[6] The motion also sought to limit the scope of the

[5] December 2, 2016 Notice, p. 4.

[6] RESA repeated this desire for clarification of the adequacy of the Notice and the scope of issues in a subsequent motion filed on April 13, 2017. Direct Energy Services, LLC raised similar concerns in its April 3, 2017, Opposition to Motion to Compel of Public Utility Law Project. It also raised the issue in its June 9, 2017 Interlocutory Appeal and Request for Stay Pending Commission Review of Ruling on Motion to Compel Discovery Responses, but deferred to the instant Interlocutory Appeal for a determination on the issue.

proceedings to exclude issues relating to large C&I customers and ESCO profitability.

Regarding the issue of suspending the evidentiary proceeding, RESA, relying on Public Service Law (PSL) sections 11 and 8, argued that the December 2, 2016 Notice was procedurally deficient because the Secretary to the Commission exceeded her authority to issue such a notice. According to RESA, the PSL requires that a hearing is to be held only in cases where required by law or in cases where the Commission so directs. Since this case does not require a hearing, RESA asserts that the Secretary's authority is limited to issuing notices that have been expressly authorized by the Commission. RESA adds that because there was no public filing of a certificate pursuant to PSL § 8 indicating that the Chair had directed a hearing or authorized the Secretary to direct a hearing, the December 2, 2106 Notice is deficient. It then moved to have the proceedings held in abeyance while parties sought further relief from the Commission.

Staff of the Department of Public Service (Staff) filed a reply to RESA's motions on April 21, 2017.[7] Staff argued that RESA misinterprets the PSL and that RESA's argument runs counter to the language of the statute and regulations, as well as years of practice by the Secretary, who acts on behalf of the Commission when issuing such notices. Staff also points to PSL § 8 and agrees that RESA is correct that the Secretary cannot "conduct any investigation or hearing" without a specific authorization by the Commission, but explains that that is not what the Secretary has done. Staff asserts that the Notice

[7] The New York State Office of General Services (OGS), the Impacted ESCO Coalition (Coalition), and Constellation Energy Gas Choice, LLC (Constellation) also responded to RESA's motion, but none of these entities took issue with respect to the validity of the December 2, 2016 Notice.

simply established the two procedural tracks in these proceedings, the first of which is an evidentiary hearing and that the Secretary is not required to "have all the powers of a commissioner" in order to issue a notice. It is, instead, the presiding administrative law judges that have the authority to actually conduct hearings and it is the judges, not the Secretary, who are doing so in this case.

Staff continues that the Secretary, under the authority of 16 NYCRR §4.2, as has always been the Commission's practice, acts on behalf of the Commission when issuing notices. Staff concludes that, while specific authorization is necessary for the Secretary to conduct hearings, the PSL requires no such authorization to simply issue a notice of hearings.

With regard to the portion of RESA's motion seeking to limit the scope of the proceedings, RESA sought clarification that the proceedings should be solely focused on the retail market for residential and small non-residential (mass market) customers and not on the C&I market. It sought to limit not only the scope of the proceedings but also the breadth of discovery; specifically RESA argued that the Notice did not adequately apprise ESCOs serving large C&I customers that the proceeding would include that market and that including C&I data would unduly burden ESCOs in the presentation of their cases. RESA, Constellation and the Coalition argued that the issues related to ESCO profitability should be excluded because the Notice was inadequate and/or that they are not within the Commission's authority to address. Staff argued that the December 2, 2016 Notice did not in any way limit discovery and that its discovery on C&I ESCO activity is a legitimate and necessary line of inquiry as the information may help to inform the process on the overall functioning of the mass market. Staff also cited the very broad language on permissible

discovery in 16 NYCRR § 5.1(a). Staff further asserted that the Commission has the authority to investigate its decision to reconsider whether ESCOs should be subject to PSL Article 4 regulation and cited to the Commission's broad authority over the sale and distribution of gas and electricity under PSL section 5 as further support.

May 15, 2017 Ruling

On May 15, 2017, the presiding administrative law judges issued the Ruling Denying Motion to Hold Proceeding in Abeyance (May 15, 2017 Ruling). Taking into consideration the Commission's concerns over the current structure of the retail energy mass market, the presiding administrative law judges declined to suspend or hold the hearings in abeyance. The Ruling discussed the Supreme Court order which acknowledged the Commission's jurisdiction over retail markets, specifically the authority over ESCO eligibility and marketing practices, but remanded to the Commission certain aspects of the Reset Order in order to provide adequate opportunity for the ESCOs to be heard. In light of the remand and the express directive in it to issue a notice specific to the directives of the Reset Order and conduct further proceedings, and "given the ongoing nature of the Commission's investigation into the role ESCOs play in the State"[8] the presiding administrative law judges considered the Secretary's issuance to be a ministerial act that implements the Court's order and advances the Commission's continuing investigation.

May 23, 2017 Ruling

On May 23, 2017, the Ruling on Motion to Limit the Scope of Proceedings (May 23, 2017 Ruling) was issued. In it, the presiding administrative law judges clarified that the scope of the proceedings is limited to an investigation into the

[8] May 15 2017 Ruling, p. 6.

retail market for mass market customers. They declined, however, to limit discovery to exclude data on large C&I customers and ESCO profitability explaining that such information may lead to information relevant to the operation of mass market and the Commission's concerns for mass market customer abuses, including potential overcharges.[9]

RESA and Direct Energy's Interlocutory Appeal

In their Appeal, Appellants ask the Commission to terminate or stay the Track I evidentiary hearing process and restructure the Track II collaborative process to address all three issues identified in the December 2, 2016 Notice. They request that the Commission grant a stay of the Evidentiary Proceeding until 15 days after the interlocutory appeal has been determined;[10] grant interlocutory review of the May 15 Ruling and the Scope Ruling; and rescind the December 2, 2016 Notice or, at a minimum, limit the scope of discovery to only the retail energy mass markets and only those issues specifically addressed in the December 2, 2016 Notice.

RESA and Direct Energy assert that the Commission's rules do not allow for the issuance of the notice setting the evidentiary hearing and that, contrary to the presiding administrative law judges' ruling, Supreme Court, Albany County did not give any express order to the Secretary to issue a notice and conduct an evidentiary hearing; that the Court never

[9] The concerns about the ability to prepare adequate testimony and exhibits were addressed in a May 11, 2017 Ruling on Schedule and need not be addressed here.

[10] On July 7, 2017, the presiding administrative law judges issued a ruling modifying the evidentiary schedule in light of the pending motions changing the date for direct testimony to August 24 and slipping the remaining portions of the schedule accordingly. As this order is being issued more than 15 days before the date direct testimony is due, the stay was in effect granted by that ruling and will not be addressed further in this order.

questioned the propriety of the collaborative process or suggested that the Commission was required to conduct a hearing; rather it simply urged the Commission to provide the ESCOs a fair and meaningful opportunity to be heard. Nor, according the Appellants, did the Commission in the Reset Order state that a hearing would be needed or give the Secretary authority to issue the Notice; it only mentioned solicitation of comments. Appellants further argue that the Secretary did not have the authority to issue the notice and that, therefore, the evidentiary proceeding is invalid until a "proper" notice is issued. They state that even if the Commission authorized the proceeding, there is no evidence that the Chair filed, what they say is, the requisite certificate authorizing the Secretary to notice the proceeding. According to Appellants, it is the absence of a publicly filed certificate to indicate the Chair or the Commission has specifically authorized the Secretary to initiate a hearing that invalidates the Notice.

Regarding the May 23, 2017 Ruling, Appellants argue that the continuance of the discovery phase is improper because, due to the inadequate Notice, the proceedings are invalid and not "commenced" under the rules. Thus, they argue, any ruling of the presiding administrative law judges is arbitrary and capricious and in excess of the Commission's jurisdiction. They then contend that, since the Notice focused on mass market customers and none of the 20 questions in the Notice include a discussion of large C&I customers, the scope of discovery should be limited. Understanding Staff in its response to say that it would only use the information gathered on large C&I customers to obtain ideas on how to improve the mass market, Appellants believe that should be done during the collaborative track; that if Staff is not expecting to use the C&I data in the preparation of its testimony or in cross examination, then such discovery

should not be allowed in the evidentiary hearing. Appellants assert also that the Commission lacks the authority to review ESCO profitability. The presiding administrative law judges stated in their Scope Ruling that, given its statutory duty under PSL § 53 to prevent all entities that sell gas or electricity to residential customers from demanding rates that are unjust and unreasonable, the Commission may review data on ESCO profitability. Appellants assert that PSL Article 2 does not give the Commission the authority to ensure that just and reasonable rates are set by ESCOS and that only in Article 4, which they say does not apply to ESCOs, does the Commission find its authority to set just and reasonable gas and electric rates. They further point to the Notice to say that it acknowledges the Commission's lack of authority over ESCO rates because it asks to have included in the review "whether the Commission decision not to subject ESCOs to Article 4 of the Public Service Law should be revisited." Finally, Appellants feel that having to submit profitability data is anathema to the concept of competitive markets and antitrust policies.[11]

LEGAL AUTHORITY

Interlocutory review of a ruling by a presiding administrative law judge will be available and may be sought only in extraordinary circumstances [16 NYCRR §4.7]. Normally, the prospect of parties' incurring additional workload in consequence of a ruling will not in itself constitute extraordinary circumstances, but a showing based on substantial,

[11] No party filed an independent response to this interlocutory appeal. However, in the June 9, 2017 Interlocutory Appeal and Request for Stay Pending Commission Review of Ruling on Motion to Compel Discovery, Constellation and Direct Energy recite to the Rulings and this Appeal only to set forth a more complete history of the proceeding.

likely wasteful, workload is not ruled out.[12] Any request for interlocutory review must identify specifically the ruling to be reviewed and must identify the extraordinary circumstances alleged to warrant interlocutory review. In determining whether extraordinary circumstances are present, the Commission examines the information being sought to determine if exclusion of the information from the record would render the parties and the Commission unable to conduct the analysis called for by the relevant provision of the Public Service Law or whether the information may serve as the basis for the Commission's decision in the proceeding. Ultimately, the determination of whether extraordinary circumstances exist is fact specific and is done on a case-by-case basis.

DISCUSSION AND CONCLUSION

Extraordinary Circumstances

The Commission finds that the interlocutory appeal does not demonstrate extraordinary circumstances, but the Commission has nevertheless decided to hear the interlocutory appeal to provide guidance to the parties. Each of the allegations is discussed by topic area below.

Effect of the December 2, 2016 Notice

As clearly stated in the May 15, 2017 Ruling, the Secretary's December 2, 2016 Notice did not initiate a proceeding; it was merely setting forth the continuation of a process that was started in Cases 12-M-0476 et al. and which contemplated further investigation and evaluation of the retail energy market.[13]

The Appellant's arguments as to the jurisdictional effect of the December 2, 2016 Notice are gravely misplaced.

[12] Case 91-M-1080, Public Service Commission - Rules of Procedure, Opinion 92-20 (issued July 17, 1992), mimeo p. 46.
[13] Reset Order, pp. 2, 20.

The operable regulation regarding hearing notices is that portion of 16 NYCRR § 4.2 that states:

> Notice of hearings, specifying time, place and purpose, will be given in accordance with statutory requirements and such additional requirements as the commission, the secretary, or the presiding officer may direct.

The regulation does not specify that hearing notices must be provided, issued or published by any specific person or entity.

As to notices required by statute, some statutes require that applicants publish the notice.[14] Other statutes provide that the utility company must publish the notice.[15] For a rulemaking, as is under consideration in these proceedings, the applicable statute, the State Administrative Procedure Act (SAPA), provides that a Notice of Proposed Rulemaking (hereafter referred to as a SAPA notice) must be submitted by the agency to the Secretary of State for publication in the State Register.[16]

For reasons that should be obvious, the Commission in practice has deemed the preparation and submission of such SAPA notices to be ministerial acts.[17] It is not practical for a five-member Commission to convene an open meeting in the manner required by law for Commission meetings and to jointly deliver SAPA notices to the Secretary of State. Applicants and utilities are required to prepare the SAPA notices in many proceedings. In other cases, various employees of the Department of Public Service are assigned the preparation task. In all cases, the actual submission of the notice by the agency to the Secretary of State is performed by a clerk under the

[14] PSL Articles VII and 10.
[15] PSL § 66(12)(b).
[16] SAPA § 202.
[17] Approximately 315 SAPA notices of proposed rulemaking are prepared per year on behalf of the Commission.

supervision of the Secretary to the Commission. What is required for due process is that notice is provided to the public.

While the December 2, 2016 Notice advises parties that there will be an evidentiary track in these proceedings, it is not a notice setting a hearing. Instead, it is an additional notice about process. The Secretary never was or claimed to be empowered to conduct investigations or hearings. In that sense, the Secretary was performing a ministerial function by issuing the notice. The December 2, 2016 Notice gave parties a head-start in the proceeding as to what was to be required.

The notice of proposed rulemaking in these proceedings that satisfies the statutory requirement for rulemaking under SAPA was prepared by a presiding administrative law judge and was published in the State Register on June 7, 2017. It gives notice of all 20 issues specified in the December 2, 2016 Notice. It also gives the necessary notice of the evidentiary hearings to be conducted and was given far in advance of the evidentiary hearings, which have yet to commence. The presiding administrative law judge that prepared the June 7, 2017 notice of proposed rulemaking/hearing notice that was published in the State Register was duly authorized at that time to conduct any investigation or evidentiary hearings in these proceedings which the Commission is authorized to conduct. Such authorization is in full compliance with the certification requirements of Section 8 of the Public Service Law.

In addition, both the Secretary's December 2, 2016 Notice and the June 7, 2017 SAPA notice are fully responsive to the directive in Judge Zwack's Decision and Order that a notice

be issued "specific to the directives of the February 26, 2016 Reset Order."[18]

Given these facts, the Appellants' misplaced allegations have failed to demonstrate any jurisdictional defect. The facts and circumstances alleged by the Appellants do not demonstrate grounds for reversal of either the May 15, 2017 Ruling or the May 23, 2017 Ruling. The interlocutory appeal in this regard has been heard by the Commission and is denied.

Evidentiary Hearings

The Commission agrees with the Appellants that Judge Zwack's Decision & Order does not specifically require the Commission to hold evidentiary hearings. Contrary to Appellants' suggestion, the May 15, 2017 Ruling of the presiding administrative law judges does not assert that the Judge's Decision & Order requires the Commission to hold evidentiary hearings. At most, the May 15, 2017 Ruling implies that evidentiary hearings would be consistent with providing additional process as Judge Zwack found was necessary as to providing additional notice. The Appellants' allegations that the presiding administrative law judges were relying on the Judge's Decision & Order as authority to conduct evidentiary hearings are simply incorrect and therefore fail to demonstrate grounds for reversal of the May 15, 2017 Ruling.

The plea by the Appellants to put a stop to the pending evidentiary hearing phase of these proceedings is most unusual. Ordinarily, parties before the Commission with something important at stake usually demand more process, not less. Evidentiary hearings entail a higher level of formal process than notice and comment processes and legislative-type

[18] Matter of National Energy Marketers Assoc. et al., supra, pp. 13-15.

public statement hearings. The purpose of all three types of procedures is to provide for fundamental due process – the right to notice and an opportunity to be heard – before a tribunal decides the outcome of a matter. Public statement hearings are an excellent vehicle for the Commission to hear from members of the public in a setting that is not overly formalistic or imposing to individuals. Notice and comment processes are often sufficient to undertake rulemakings. But the Commission often uses trial-type evidentiary hearings in rulemakings when there is significant disagreement among the stakeholders as to facts because the evidentiary process is often the most efficient and precise method to get to the truth. In these proceedings, the parties attempted in earlier phases to reach a consensus in a collaborative process, did not reach agreement, and then disputed the veracity of the report prepared describing what occurred and was agreed upon in the collaborative. That effort did not bear fruit. The Commission expects that in these proceedings the parties will address disputed factual questions as to how and why ESCOs can be profitable, what constitutes a workably competitive market, whether the market can be made competitive or should be abandoned, and to what extent the experience of the C&I segment can used to guide how to address the problems in the mass market.

Given the substantial change in the Commission's membership in the past few months, the Commission takes this opportunity now to make it clear that the Commission authorizes and supports such hearings. Consequently, the Commission hereby confirms that this matter is appropriately assigned to administrative law judges who are authorized to conduct a full hearing process. Going forward in these proceedings, the Commission will be facing significant decisions and it is important that the Commission have the benefit of a robust

record established pursuant to a process where every participant has the opportunity to be heard. The Commission desires a record where the facts have been tested so that when the record is presented to the Commission it will be able to discern the material and substantiated facts and concentrate its efforts more directly on applying the facts to formulating policy. It is the judgment of the Commission that its needs in that regard are best met in this instance by the parties participating in an evidentiary process. The Commission asks the parties to put aside their objections now that the Commission has expressed its desires and embrace the process that has been established without further delay and distractions. The interlocutory appeal in this regard has been heard by the Commission and is denied.

C&I Customer Issues and Information

In the May 23, 2017 Ruling the presiding administrative law judges confirmed their understanding that the scope of the case is limited and exercised their discretion in resolving a dispute on the scope of discovery by ruling that discovery of information related to C&I customers is available so long as such information is likely to lead to information relevant and material to the investigation into why the retail market appears to be failing mass-market customers. The Commission is hesitant to entertain interlocutory review on this topic because that precedent may invite litigious parties in many proceedings to begin to challenge every minor ruling made by presiding administrative law judges to settle discovery disputes. That reaction would not be efficient or warranted. The Commission notes that the allegations presented do not constitute extraordinary circumstances or grounds for reversal of the May 23, 2017 Ruling on an interlocutory basis and that the presiding administrative law judges acted fully within their

discretion and correctly applied the discovery rules. The Commission also believes that the C&I information will be directly relevant to this proceeding. For example, evidence on ESCO products currently offered to C&I customers that parties believe are providing value to C&I customers, and evidence as to whether similar products could be successfully offered to mass market customers would be of particular interest and relevance to the Commission in these proceedings. The claim that these issues would be better presented in a collaborative does not demonstrate extraordinary circumstances or grounds for reversal. The interlocutory appeal in this regard has been heard by the Commission and is denied.

ESCO Profitability

The most fundamental question in these proceedings is whether a viable market for ESCOs to serve mass market customers can exist. If "viable market" is defined as one in which mass-market customers receive valuable services at reasonable prices and ESCOs can profitably provide such services, then the question of ESCO profitability is a core issue that must be investigated. If ESCOs can only make a profit by overcharging customers in relation to the value they receive, then it is unlikely that a viable market can exist or that any market should exist. As such, the question of ESCO profitability was an issue that necessarily must be addressed in this proceeding and was raised in the December 2, 2016 Notice.

In the May 23, 2017 Ruling, the presiding administrative law judges correctly ruled that data regarding ESCO profitability may reveal information relevant to, among other issues, the Commission's concerns about mass-market customer abuses, including potential overcharges. This conclusion was unquestionably correct, even under a variety of scenarios as to what the evidentiary record may show. For

instance, proof that ESCOs are earning returns that exceed those that would normally be achieved in a competitive market may show that the market is not workably competitive. In addition, proof that the ESCOs cannot beat utility hedged prices and are forced to resort to abusive sale tactics or rely on other sources of revenues may also go to the question of whether the market is workably competitive.

Appellants' arguments about the scope of Commission authority have already been decided against them by the Courts that found that the Commission has broad statutory jurisdiction and authority over the sale of gas and electricity that authorizes it to impose the limitations set forth in the Reset Order.[19] The Commission accordingly has full authority to investigate and ascertain facts in determining whether the markets are not working properly. Such facts may go to whether the Commission should require the limitations required by the Reset Order or such other remedies as may be necessary to address flaws in the markets. Such other remedies may include prohibiting ESCOs from providing service or altering existing Commission policies with respect to market design.

The allegations presented do not constitute extraordinary circumstances or grounds for reversal of the May 23, 2017 Ruling on an interlocutory basis and the presiding administrative law judges again acted fully within their

[19] National Energy Marketers Association et al. v. New York State Public Service Commn., (Albany County Index No. 868-16); Retail Energy Supply Association et al. v. New York State Public Service Commn., (Albany County Index No. 870-16); Family Energy Inc. et al. v. New York State Public Service Commn., (Albany County Index No. 874-16), Decision/Order issued July 22, 2016 (Zwack, J), aff'd Matter of National Energy Marketers Assn. v. Pub. Serv. Commn., 2017 NY Slip Op 05901 (July 27, 2017) and Matter of Retail Energy Supply Assn. v. Public Serv. Commn., 2017 NY Slip Op 05908 (July 27, 2017).

discretion and correctly applied the discovery rules. The interlocutory appeal in this regard has been heard by the Commission and is denied.

The Commission orders:

1. The May 30, 2017 Interlocutory Appeal of the Retail Energy Supply Association (RESA) and Direct Energy Services, LLC (Direct Energy) is denied, consistent with the discussion in this order.

2. The Commission affirms that the pending evidentiary hearings are authorized by the Commission and are entirely appropriate and necessary to ensure a full record in these proceedings given the nature of the matters under consideration. The Commission further affirms that the presiding administrative law judges are authorized to conduct such hearings.

3. The parties to these proceedings shall produce documents and information in response to discovery questions that were the subject of the May 15, 2017 Ruling and May 23, 2017 Ruling consistent with the discussion in those rulings and in this order, within 15 days of the date of this order.

4. These proceedings are continued.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary