

PAULA M. CARMODY
PEOPLE'S COUNSEL

WILLIAM F. FIELDS
DEPUTY PEOPLE'S COUNSEL

STATE OF MARYLAND



OFFICE OF PEOPLE'S COUNSEL

6 Saint Paul Street, Suite 2102
Baltimore, Maryland 21202
(410) 767-8150 (800) 207-4055
FAX (410) 333-3616
WWW.OPC.STATE.MD.US

ASSISTANT PEOPLE'S COUNSEL

GARY L. ALEXANDER
JOSEPH G. CLEAVER
JACOB M. OUSLANDER
MIKHAIL RAYKHER
ANNA K. RYON
PATRICK E. O'LAUGHLIN
PHILIP H. SHEEHAN, JR.
FREDERICK H. HOOVER

September 11, 2019

Terry J. Romine
Executive Secretary
Public Service Commission
Of Maryland
6 St. Paul Street, 16th Floor
Baltimore, Maryland 21202

Re: Case No. 9613, Case No. 9614 and Case No. 9615

Enclosed for filing, please find the originals and twelve (12) copies of the Procedural Schedules Proposed by the Office of People's Counsel in the above-referenced cases. A copy has been provided to all parties of record.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

/electronic signature/

Jacob M. Ouslander
Assistant People's Counsel

JMO:eom
Enclosure

cc: Jennifer Grace, PULJ, Maryland Public Service Commission
Krisitn Lawrence, PULJ, Maryland Public Service Commission
Janice Flynn, PULJ, Maryland Public Service Commission
All Parties of Record

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

IN THE MATTER OF THE COMPLAINT OF	*	
THE STAFF OF THE PUBLIC SERVICE	*	
COMMISSION AGAINST SMARTENERGY	*	Case No. 9613
HOLDINGS D/B/A SMARTENERGY	*	

* * * * * * *

IN THE MATTER OF THE COMPLAINT OF	*	
THE STAFF OF THE PUBLIC SERVICE	*	
COMMISSION AGAINST DIRECT	*	Case No. 9614
ENERGY SERVICES, LLC	*	

* * * * * * *

IN THE MATTER OF THE COMPLAINT OF THE	*	
STAFF OF THE PUBLIC SERVICE COMMISSION	*	
AGAINST U.S. GAS & ELECTRIC D/B/A MARYLAND	*	Case No. 9615
GAS & ELECTRIC AND ENERGY SERVICES	*	
PROVIDERS, INC. D/B/A MARYLAND GAS & ELECTRIC	*	

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PROCEDURAL SCHEDULES PROPOSED BY THE OFFICE OF PEOPLE’S COUNSEL

The Office of People’s Counsel (“OPC”) makes this filing to inform the three Public Utility Law Judges (“PULJs”) of the schedule it proposes for the three cases captioned above. OPC intends to present evidence of violations of the Commission’s regulations and consumer protection laws in all three cases as it has done in previous cases involving conduct by electricity and gas suppliers. As requested by the PULJs, OPC, Commission Staff (“Staff”) and counsel for the three suppliers named in these cases have met to discuss the schedule for these cases. The parties have not been able to come to an agreement on the schedule. Therefore, OPC is filing its proposed schedule in all three cases for consideration by the PULJs.

In developing this schedule, OPC took into consideration a number of factors. First, it will be most efficient for all parties for OPC to file testimony at the same stage of the proceeding as

Staff. Both OPC and Staff will be filing testimony that provides evidence of violations by the suppliers. Requiring this testimony to be filed at the same time will allow each supplier to challenge the position of both agencies in their initial reply testimony. OPC also supports staggering the schedules in these cases so that the testimony and briefs are not due at the same time for all three cases. As OPC intends to hire one consulting firm with one primary witness for all three cases, staggering will allow OPC to use a single consultant to prepare testimony for each the three cases in a consistent manner.

OPC has reviewed the information currently available in all three cases and believes that the case involving Smart Energy will be the least complicated of the cases to conduct discovery and prepare testimony. OPC has requested through a Public Information Act Request all the Consumer Affairs Division (“CAD”) files for complaints against the three companies since 2016. OPC has received a summary of those files but has not yet received copies of all of the files at this time. There are 34 complaint files for Smart Energy.¹ This is significantly less than the complaint files for Maryland Gas and Electric, (210) complaints, and Direct Energy, (106) complaints. Additionally, the Smart Energy case appears to involve only telephone solicitations while the other cases appear to involve both telephone solicitation and door-to-door solicitation. OPC is aware that there are recordings of at least some of the Smart Energy telephone solicitations. Door-to-door solicitations are not recorded and present added complexity and factual issues that need to be explored in discovery. Therefore, OPC proposes that the Smart Energy case proceed first; followed by Maryland Gas and Electric and Direct Energy.

OPC has considered the amount of discovery that must be taken in order to prepare direct testimony in these cases. In order to determine whether any of the three suppliers in these actions

¹ The customer complaint files that are listed in the Staff complaints are included in the number of complaint files presented here.

have “engaged in a pattern or practice of systemic violations of the consumer protections contained in the Public Utilities Article and the Commission’s regulations,” as directed in Order 89191, OPC anticipates that it will need two to three rounds of discovery,² followed by depositions, and at least one round of discovery after that. Based on this, OPC believes that it will require at least four months to conduct discovery and prepare direct testimony for the Smart Energy case. Therefore, the Direct Testimony date proposed by OPC for the Smart Energy case in January 31, 2020. (This date recognizes the fact that the discovery and testimony preparation period will extend over the Thanksgiving, Christmas, and New Year’s holidays.)

Following the filing of Direct Testimony, OPC’s proposal would provide each Company with six weeks to prepare Reply Testimony. OPC and Staff would then have four weeks to prepare Rebuttal testimony. OPC has also included a Surrebuttal round due three weeks after the rebuttal testimony to give each Company another opportunity to be heard before the start of the evidentiary hearings. OPC recommends at least two weeks between the last round of filed testimony and the start of evidentiary hearings in these cases to allow the parties to prepare efficient presentations for the hearings. OPC has also included a filing date for Stipulations of Fact prior to the start of evidentiary hearings but after all testimony has been filed. Finally, OPC believes that an entire week be blocked off for the evidentiary hearings in each case until the parties are in a better position to estimate whether fewer days will be sufficient. (As an additional consideration, OPC has extended some of the dates on the proposed schedule to avoid having an evidentiary hearing in one case while the parties are briefing another cases.)

Based on these considerations, OPC proposes the following schedule for the three cases:

² This is discovery in addition to the limited discovery that has taken place in the case prior to the delegation order.

	Smart Energy CN 9613	MdG&E CN 9615	Direct Energy CN 9614
Staff and OPC Direct Testimony	Jan. 31, 2020	April 3, 2020	May 22, 2020
Reply Testimony	March 13, 2020	May 15, 2020	July 3, 2020
Rebuttal Testimony	April 10, 2020	June 12, 2020	July 31, 2020
Surrebuttal Testimony	May 1, 2020	July 6, 2020	Aug. 21, 2020
Stipulations of Fact	May 8, 2020	July 13, 2020	Aug. 28, 2020
Evidentiary Hearings	May 18 to May 22, 2020	July 20 to July 24, 2020	Sept. 14 to Sept. 18, 2020
Initial Brief	June 19, 2020	Aug. 21, 2020	Oct. 16, 2020
Reply Brief	July 10, 2020	Sept. 11, 2020	Nov. 6, 2020

At this point, the Maryland Gas and Electric and Direct Energy cases appear more complex than Smart Energy, and OPC anticipates discovery will require more time in those cases. Therefore, discovery in all three cases should commence immediately³ and OPC proposes the same time frames for responses and objections that were used in Case Number 9346. Specifically, OPC proposes that prior to the Direct Testimony responses to discovery requests would be due in 10 calendar days (with objections due in 4 calendar days); 7 calendar days between Direct and Reply (with objections due in 3 calendar days); and thereafter 4 calendar days (with objections due in 2 calendar days).

For the reason stated above, OPC respectfully requests that the schedule proposed herein be adopted for the three cases.

Respectfully submitted,

/electronic signature/
William F. Fields, Esq.
Deputy People's Counsel

Jacob M. Ouslander
Assistant People's Counsel

Anna K. Ryon
Assistant People's Counsel

Philip H. Sheehan
Assistant People's Counsel

³ OPC has served discovery requests on each of the three Companies; many of which have not yet been answered. OPC requests that the Companies be directed to respond to those requests within 10 calendar days of the pre-hearing conference without requiring OPC to serve those requests a second time.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 11th day of September, 2019, the foregoing “Procedural Schedules Proposed by the Office of People’s Counsel” for Case Nos. 9613, 9614 and 9615 was either hand-delivered, e-mailed or mailed first-class, postage prepaid to all parties of record to this proceeding.

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Jacob M. Ouslander
Assistant People’s Counsel
Maryland Office of People’s Counsel
6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202
(410) 767-8150