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September 9, 2019

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Petition of PPL Electric Utilities Corporation for Approval of Tariff Modifications
and Waivers of Regulations Necessary to Implement its Distributed Energy
Resources Management Plan
Docket No. P-2019-3010128**

Dear Secretary Chiavetta:

Enclosed for filing is the Answer of PPL Electric Utilities Corporation to the Motion for Leave to Reply & Reply Filed by Natural Resources Defense Council & Sunrun, Inc. in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/jl
Enclosures

cc: Honorable Emily I. DeVoe
Certificate of Service

CERTIFICATE OF SERVICE

(Docket No. P-2019-3010128)

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL & FIRST CLASS MAIL

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Date: September 9, 2019

A handwritten signature in black ink, appearing to read "Devin Ryan", written over a horizontal line.

Devin Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities :
Corporation for Approval of Tariff :
Modifications and Waivers of : Docket No. P-2019-3010128
Regulations Necessary to Implement its :
Distributed Energy Resources :
Management Plan :

**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION TO
THE MOTION FOR LEAVE TO REPLY & REPLY FILED BY
NATURAL RESOURCES DEFENSE COUNCIL & SUNRUN, INC.**

TO ADMINISTRATIVE LAW JUDGE EMILY I. DEVOE:

Pursuant to 52 Pa. Code § 5.61, PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby files this Answer to the Motion for Leave to Reply & Reply filed by Natural Resources Defense Council (“NRDC”) and Sunrun, Inc. (“Sunrun”). In their Motion, NRDC and Sunrun ask for leave to file an enclosed “Reply” to PPL Electric’s August 22, 2019 letter. In both their Motion and Reply, NRDC and Sunrun respond to PPL Electric’s August 22, 2019 letter and request that, before the instant matter proceeds further, Administrative Law Judge Emily I. DeVoe (“ALJ”) or the Pennsylvania Public Utility Commission (“Commission”) should issue an order either denying PPL Electric’s above-captioned Petition or initiating a statewide rulemaking proceeding to address the issues raised in the Company’s Petition.

As explained herein, NRDC and Sunrun’s Motion and Reply are completely without merit and should be denied. In their Motion and Reply, NRDC and Sunrun request that the Company’s Petition be dismissed without an evidentiary hearing. Their request for a “preliminary ruling” on the Company’s Petition in the Motion and Reply is contrary to long-standing Commission practice, procedure, and law, and it would also deny PPL Electric due process. Moreover, even if their request for a “preliminary ruling” were properly before the

ALJ, which it is not, NRDC and Sunrun utterly fail to establish that they are entitled to such relief.

In support of its Answer, PPL Electric states as follows:

I. BACKGROUND

1. On May 24, 2019, PPL Electric filed its Petition for Approval of Tariff Modifications and Waivers of Regulations Necessary to Implement its Distributed Energy Resources Management Plan (“DER Management Plan”) with the Commission. The DER Management Plan will govern the interconnection and operation of new Distributed Energy Resources (“DERs”) deployed in the Company’s service territory.

2. On May 29, 2019, PPL Electric filed a letter requesting that notice of the Petition be published in the *Pennsylvania Bulletin*.

3. On June 29, 2019, notice of the Petition was published in the *Pennsylvania Bulletin*. See 49 Pa.B. 3454. Per that notice, formal protests and petitions to intervene were due on or before July 15, 2019.

4. On July 10, 2019, a Secretarial Letter was issued directing PPL Electric to serve the Secretarial letter upon additional solar entities notifying them of the Petition. Further, the deadline to file protests/comments was extended until 4:30 PM on July 30, 2019.

5. On July 12, 2019, PPL Electric filed a letter and certificate of service evidencing that it served the Secretarial Letter upon additional solar entities, as required by the Secretarial Letter.

6. On July 20, 2019, the substance of the Secretarial Letter was published as a notice in the *Pennsylvania Bulletin*. See 49 Pa.B. 3853.

7. On July 29, 2019, Trinity Solar filed Comments on the Company’s Petition.

8. On July 30, 2019, the Office of Consumer Advocate (“OCA”), NRDC, and Sunrun filed Answers to the Petition. NRDC and Sunrun also filed Petitions to Intervene.

9. Further, on July 30, 2019, Comments were filed by Sustainable Energy Fund (“SEF”), GridLab, the Solar Unified Network of Western Pennsylvania (“SUNWPA”), Energy Independent Solutions, LLC (“EIS”), the Interstate Renewable Energy Council, Inc. (“IREC”), the Pennsylvania Solar Energy Industries Association (“PASEIA”), and Exact Solar.

10. No parties filed preliminary objections to the Company’s Petition.

11. Based on a review of the online docket, the matter was assigned first to the Office of Special Assistants (“OSA”) on August 6, 2019, and then transferred later that same day to the Office of Administrative Law Judge (“OALJ”).

12. On August 22, 2019, PPL Electric filed a letter inquiring about the procedural status of the proceeding and requesting that the matter being assigned to an administrative law judge for hearings.

13. Also on August 22, 2019, an Interim Order was issued granting the Petitions to Intervene filed by NRDC and Sunrun.

14. On August 28, 2019, the ALJ issued the Prehearing Conference Order, which set forth certain procedural rules for the proceeding and directed the parties to file prehearing memoranda on or before Noon on September 9, 2019. A Notice also was issued scheduling the telephonic prehearing conference for September 11, 2019, at 2:00 PM.

15. On August 30, 2019, NRDC and Sunrun filed: (1) a Preliminary Objection to PPL Electric’s August 22, 2019 letter; and (2) a Motion for Leave to Reply & Reply to PPL Electric’s August 22, 2019 letter. The pleadings were served by email and first class mail. However, the email serving the pleadings was sent after 4:30 PM, and the hard copies were sent via first class

mail. Therefore, under the Commission's regulations, the Company was served by email on September 3, 2019, and by first class mail on August 30, 2019.¹ Consequently, PPL Electric's Answer to the instant Motion is not due until September 23, 2019.²

16. On September 3, 2019, SEF filed a Petition to Intervene.

II. ANSWER TO NRDC AND SUNRUN'S MOTION FOR LEAVE TO REPLY & REPLY

17. NRDC and Sunrun's Motion for Leave to Reply and their Reply³ should be denied because their request for a "preliminary ruling" on PPL Electric's Petition flatly contravenes long-standing Commission practice, procedure, and applicable law and would deny the Company due process.

18. In both their Motion and Reply, NRDC and Sunrun request that the ALJ or the Commission issue a preliminary ruling on whether the Company's Petition should be denied, whether the issues should be addressing in a statewide proceeding, or whether the instant matter should continue through an administrative litigation process. (Motion, p. 2; Reply, pp. 6-7.) Indeed, their Reply explicitly includes a "Request for Preliminary Ruling on the Merits and

¹ See 52 Pa. Code § 1.56(a) (stating that "[t]he date of service shall be the earliest day when the document served" is, among other things, "transmitted by telefacsimile or electronic mail as provide in § 1.54(b) (relating to service by a party) prior to 4:30 p.m. local prevailing time" or "deposited in the United States mail"); *id.* § 1.56(b) ("Unless otherwise prescribed by the Commission or presiding officer, whenever a party is required or permitted to do an act within a prescribed period after service of a document upon the party and the document is served by first-class mail by the United States Postal Service, 3 days shall be added to the prescribed period.").

² See 52 Pa. Code § 5.61(a)(1) (stating that answers to motions shall be filed within 20 days of the service date).

³ PPL Electric notes certain procedural defects with NRDC and Sunrun's Motion and Reply. First, there is no separate Notice to Plead accompanying the Motion. Their Motion simply includes a sentence on the first page of the Motion that a response is due within 20 days. (Motion, p. 1.) This is not consistent with Commission practice and procedure, under which a formal Notice to Plead accompanies motions to which responsive pleadings are due. See 52 Pa. Code § 5.103(b) ("Written motions must contain a notice which states that a responsive pleading shall be filed within 20 days of the date of service of the motion."); *see also* Pa. R.C.P. No. 1026. Second, all "[p]leadings" filed with the Commission, including motions and answers, "must be divided into numbered paragraphs." 52 Pa. Code §§ 1.31(a), 5.1 (stating that "[m]otions" and "answer[s]" are "pleadings in an action before the Commission"). Neither the Motion nor the Reply is divided into numbered paragraphs.

Procedural Clarification” that requests a “preliminary ruling” on these “foundational issues.” (Reply, pp. 6-7.) NRDC and Sunrun’s Motion and Reply should be denied for several reasons.

19. First, the fundamental flaw with NRDC and Sunrun’s Motion and Reply is their inappropriate and unlawful request of a “preliminary ruling” on the merits Company’s Petition without an evidentiary hearing. Because this is an adversarial proceeding with materially disputed facts, under the Commission’s regulations, the only permissible pleadings that may result in the dismissal of the Company’s Petition without an evidentiary hearing are: (1) preliminary objections; (2) motions for judgment on the pleadings; and (3) motions for summary judgment. *See* 52 Pa. Code §§ 5.101, 5.102.

20. Here, NRDC and Sunrun did not file a preliminary objection to PPL Electric’s Petition,⁴ nor did they file a motion for judgment on the pleadings or motion for summary judgment. To date, they only have filed Petitions to Intervene, Answers to PPL Electric’s Petition, a Preliminary Objection to the Company’s August 22, 2019 letter, and the instant Motion for Leave to Reply & Reply. Therefore, in the absence of any such pleading, NRDC and Sunrun cannot request, nor are they entitled to, a “preliminary ruling” on PPL Electric’s Petition without an evidentiary hearing.

21. Second, even if NRDC and Sunrun’s request for a “preliminary ruling” were properly before the Commission, which it is not, they fail to even attempt to demonstrate that the matter is ripe for preliminary disposition. The standards of review for preliminary objections and dispositive motions are well-established. In ruling on preliminary objections, the presiding officer must accept as true all well-pled allegations of material facts as well as all inferences

⁴ Because NRDC and Sunrun failed to file a preliminary objection within 20 days of service of the Petition, they cannot do so now. *See* 52 Pa. Code § 5.101(d) (stating that preliminary objections must be served within 20 days of service of a petition).

reasonably deducible therefrom. *Stilp v. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep't of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)). Moreover, any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781. For motions for judgment on the pleadings and motions for summary judgment, Section 5.102 of the Commission's regulations provides the Commission's standard of review:

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(2) *Standard for grant or denial in part.* The presiding officer may grant a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues.

52 Pa. Code § 5.102(d)(1)-(2) (emphasis added).⁵

⁵ Similarly, Rule 1035.2 of the Pennsylvania Rules of Civil Procedure sets forth the following:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa. R.C.P. No. 1035.2 (emphasis added).

22. Contrary to these well-established principles, NRDC and Sunrun: (1) fail to establish that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law; and (2) inexplicably believe that the Commission or ALJ should assume that NRDC and Sunrun's averments, not PPL Electric's averments, are true for purposes of their inappropriate request for a "preliminary ruling." In fact, NRDC and Sunrun readily admit that they disagree with PPL Electric regarding several critical facts in this proceeding, including the need for PPL Electric's Petition, whether the proposed tariff modifications and waivers of regulations necessary to implement the DER Management Plan are reasonable and in the public interest, whether the Company's Petition is premature, whether the issues are best resolved in a statewide proceeding, and several other technical and policy issues. (Motion, pp. 1-2; Reply, pp. 1-7; PPL Electric DER Petition, pp. 1-26.) To the extent that NRDC and Sunrun disagree with PPL Electric on these points, they are free to present evidence and arguments on these issues in their testimony and briefs. Obviously, however, there can be no "preliminary ruling" on the Company's Petition when there are issues of material fact.

23. Finally, PPL Electric would be denied due process if its Petition were dismissed or referred to a statewide proceeding, as requested in NRDC and Sunrun's Motion and Reply. "The Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness." *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (citations omitted). "Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal." *Id.* (citations omitted). Indeed, Section 332(c) of the Public Utility Code entitles every party to,

among other things, “submit rebuttal evidence” and “conduct such cross-examination as may be required for a full and true disclosure of the facts.” 66 Pa. C.S. § 332(c).

24. Here, NRDC and Sunrun’s request for a “preliminary ruling” would foreclose the Company’s opportunity to present its case and properly respond to the issues and allegations raised by the other parties and commenters. Indeed, on the same day that they filed their Motion and Reply, NRDC and Sunrun filed a Preliminary Objection to PPL Electric’s August 22, 2019 letter. Although their Preliminary Objection is without merit for the reasons explained in the Company’s Answer,⁶ their Preliminary Objection requests that PPL Electric’s August 22, 2019 letter be stricken from the record. On all fronts, NRDC and Sunrun want to deprive PPL Electric of any opportunity to respond to the issues and allegations raised by: (1) NRDC, Sunrun, and OCA in their Answers to the Petition; and (2) the various commenters in their Comments on the Petition. However, PPL Electric must have its opportunity to do so through the submission of testimony and the cross-examination of the other parties’ witnesses, or else the Company will be denied due process.

⁶ PPL Electric is filing its Answer to NRDC and Sunrun’s Preliminary Objection to the August 22, 2019 letter concurrently with this Answer.

III. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Motion for Leave to Reply & Reply of the Natural Resources Defense Council and Sunrun, Inc. be denied.

Respectfully submitted,



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Date: September 9, 2019

Counsel for PPL Electric Utilities Corporation

VERIFICATION

I, SALIM SALET, being the Director-Operations at PPL Electric Utilities Corporation, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect PPL Electric Utilities Corporation to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 9/9/2019



Salim Salet