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File #: 175564

March 7, 2024

***VIA ELECTRONIC FILING***

Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
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**

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Dear Secretary Chiavetta:

Enclosed for filing is the Motion of PPL Electric Utilities Corporation to Strike the Joint Solar Parties' "Reply" to PPL Electric Utilities Corporation's Answer to the Petition of Joint Solar Parties for Rescission or Amendment of PPL Electric's Distributed Energy Resources Management Pilot and Request for Expedited Proceeding.

Copies are being provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/dmc  
Enclosures

cc: Certificate of Service

## CERTIFICATE OF SERVICE

(Docket No. P-2019-3010128)

I hereby certify that a true and correct copy of this filing 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).

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Date: March 7, 2024



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**NOTICE TO PLEAD**

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YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), ANSWERS TO MOTIONS ARE DUE WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR ANSWERS SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.



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Dated: March 7, 2024

*Attorneys for PPL Electric Utilities Corp.*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**MOTION OF PPL ELECTRIC UTILITIES CORPORATION TO  
STRIKE THE JOINT SOLAR PARTIES’ “REPLY” TO  
PPL ELECTRIC UTILITIES CORPORATION’S ANSWER TO  
THE PETITION OF JOINT SOLAR PARTIES FOR RESCISSION OR AMENDMENT  
OF PPL ELECTRIC’S DISTRIBUTED ENERGY RESOURCES MANAGEMENT  
PILOT AND REQUEST FOR EXPEDITED PROCEEDING**

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**TO PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) by and through its attorneys, Post & Schell, P.C., and files, pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code § 5.103, this Motion to Strike the “Reply” of Tesla, Inc. (“Tesla”), Sun Directed, American Home Contractors (“AHC”), Sunrun, Inc. (“Sunrun”), and the Solar Energy Industries Association (“SEIA”) (collectively, “Joint Solar Parties” or “JSPs”) to PPL Electric’s Answer to the JSPs’ Petition for Rescission or Amendment.<sup>1</sup>

The JSPs’ “Reply” is an improper pleading and not authorized by the Commission’s regulations. The JSPs try to justify the filing of their “Reply” by arguing that PPL Electric raised material facts that constitute New Matter in its Answer and, as a result, the JSPs are entitled to file a Reply. *See* JSPs’ “Reply,” pp. 1-2. Furthermore, the JSPs contend that because PPL

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<sup>1</sup> In that Petition, the JSPs requested that the Commission rescind its unanimous December 17, 2020 Order (“Order”), which approved the Joint Petition for Settlement of All Issues (“Settlement”) that was achieved and filed by all the active parties in the above-captioned proceeding, or, alternatively, amending the Order to create an opt-out for customers participating in the Distributed Energy Resources (“DER”) Management pilot program.

Electric's Answer purportedly set forth New Matter, they may "be deemed in default and the allegations stated in PPL's Answer be deemed admitted" if they fail "to reply to each allegation" in PPL Electric's Answer. *Id.*, p. 2. However, the JSPs' argument flatly contravenes the Commission's regulations and Commission precedent.

First, parties are only required to plead New Matter when they are raising affirmative defenses. *See* 52 Pa. Code § 5.62(b) ("An affirmative defense shall be pleaded in an answer or other responsive pleading under the heading of 'New Matter.'") (emphasis added). Parties are not required to plead material facts as New Matter in their Answer. *See id.* ("A party may set forth as new matter another material fact which is not merely a denial of the averments of the preceding pleading.") (emphasis added). Therefore, PPL Electric was under no obligation to plead the facts set forth in its Answer as New Matter. Also, because the Company did not plead New Matter, the JSPs cannot be deemed to admit any allegations set forth in PPL Electric's Answer by failing to respond. *See id.* § 5.63.

Second, the Commission rejected essentially the same argument in another case. In *Pa. PUC v. Philadelphia Gas Works*, 2009 Pa. PUC LEXIS 596, at \*26-27 (Order entered Mar. 26, 2009) ("PGW"), the Office of Small Business Advocate ("OSBA") filed an Answer to Philadelphia Gas Works' ("PGW") Answer to the OSBA's Petition for Reconsideration and tried to justify the filing of its Answer by arguing that PGW's Answer raised New Matter. The Commission rejected the OSBA's position and granted PGW's Motion to Strike OSBA's Answer. *See id.* Therefore, consistent with Commission precedent, the Commission should follow suit here and strike the JSPs' Reply.

In support thereof, PPL Electric states as follows:

## **I. BACKGROUND**

1. PPL Electric is a public utility that provides electric distribution and provider of last resort services in Pennsylvania subject to the regulatory jurisdiction of the Commission. PPL Electric furnishes electric distribution, transmission, and provider of last resort electric supply services to approximately 1.5 million customers throughout its certificated service territory, which includes all or portions of 29 counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania.

2. On May 24, 2019, PPL Electric filed its DER Management Petition, which initiated the above-captioned proceeding.

3. On July 29, 2019, Trinity Solar filed Comments on the Company's Petition.

4. On July 30, 2019, the Office of Consumer Advocate ("OCA"), Natural Resources Defense Council ("NRDC"), and Sunrun filed Answers to the Petition. NRDC and Sunrun also filed Petitions to Intervene. Further, Comments were filed by the 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.

5. 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. An Interim Order also was issued granting NRDC and Sunrun's Petitions to Intervene.

6. On August 28, 2019, ALJ DeVoe issued the Prehearing Conference Order, which established procedural rules and required prehearing memoranda to be filed by Noon on September 9, 2019. A Notice also was issued scheduling the prehearing conference for September 11, 2019.

7. 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.

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

9. On September 9, 2019, PPL Electric filed an Answer to NRDC and Sunrun's Preliminary Objection as well as an Answer to NRDC and Sunrun's Motion for Leave to Reply & Reply. Also, prehearing memoranda were filed by PPL Electric, OCA, NRDC, and Sunrun.

10. On September 11, 2019, the prehearing conference was held as scheduled. At the prehearing conference, ALJ DeVoe established a deadline of September 20, 2019, for parties to file petitions for interlocutory review and answers to material questions. Further, the parties were directed to confer about a procedural schedule and propose a schedule by September 27, 2019.

11. On September 20, 2019, NRDC and Sunrun separately filed Petitions for Interlocutory Review and Answer to Material Questions. Also, NRDC filed a Notice of Appearance.

12. On September 25, 2019, ALJ DeVoe issued an Interim Order: (1) holding NRDC and Sunrun's Preliminary Objection to the August 22, 2019 letter and their Motion for Leave to Reply & Reply in abeyance; and (2) extending the due date for parties to submit a proposed procedural schedule from September 27, 2019, to November 6, 2019.

13. On September 30, 2019, PPL Electric filed a Brief in Opposition to, and OCA, NRDC, and Sunrun filed Briefs in Support of, the Petitions for Interlocutory Review and Answer to Material Questions.

14. On October 1, 2019, NRDC filed a corrected version of its Brief in Support of the Petitions for Interlocutory Review and Answer to Material Questions.

15. On October 17, 2019, the Commission entered an Opinion and Order denying NRDC's and Sunrun's Petitions for Interlocutory Review and Answer to Material Questions and returning the matter to ALJ DeVoe.

16. On November 6, 2019, PPL Electric submitted its proposed litigation schedule to ALJ DeVoe, noting that OCA and SEF did not oppose the Company's schedule. Further, Sunrun and NRDC filed their proposed litigation schedule with the Commission.

17. On November 7, 2019, PPL Electric filed a letter responding to NRDC and Sunrun's proposed litigation schedule.

18. On November 12, 2019, Sunrun filed a letter in reply to PPL Electric's November 7, 2019 letter.

19. On November 14, 2019, a Notice was issued scheduling a telephonic prehearing conference for November 15, 2019, before ALJ Long.

20. On November 15, 2019, the prehearing conference was held as scheduled, during which ALJ Long determined that PPL Electric's proposed litigation schedule would be used for this proceeding. Subsequently, a Notice was issued scheduling in-person evidentiary hearings for April 8-9, 2020, consistent with the adopted litigation schedule.

21. On November 18, 2019, the ALJs issued a Prehearing Order setting forth the litigation schedule and other procedural rules and requirements for the proceeding. Also, a Judge Change Notice was issued, officially assigning both ALJ Long and ALJ DeVoe to the case.

22. On December 11, 2019, PPL Electric served its written direct testimony and exhibits.



23. On January 13, 2020, PPL Electric filed an unopposed Motion for Protective Order.

24. On January 16, 2020, the ALJs issued an Order granting the Motion for Protective Order.

25. On February 5, 2020, OCA, NRDC, and SEF served their written direct testimony and exhibits.

26. On March 4, 2020, PPL Electric served its written rebuttal testimony and exhibits.

27. On March 16, 2020, the ALJs notified the parties that the April 8-9, 2020 in-person hearings would be canceled because the Commission's offices were being closed pursuant to the State of Emergency declared by Governor Wolf regarding COVID-19. The ALJs also instructed the parties to inform them by March 30, 2020, on how the parties would like to proceed.

28. On March 17, 2020, a Notice was issued canceling the in-person evidentiary hearings scheduled for April 8-9, 2020.

29. On March 19, 2020, OCA, NRDC, and SEF served their written surrebuttal testimony and exhibits.

30. On March 25, 2020, after consulting with the other parties on a scheduling proposal, PPL Electric sent an email to the ALJs proposing that the Company file a status report 30 days after March 30, 2020 (*i.e.*, by April 29, 2020), to advise the ALJs on the status of: (1) settlement; and (2) developing new dates for the evidentiary hearings. The ALJs subsequently agreed with this proposal.

31. On March 30, 2020, PPL Electric served its oral rejoinder testimony outlines.

32. On April 29, 2020, PPL Electric sent an email to the ALJs advising them that settlement negotiations were still ongoing, stating that evidentiary hearings did not need to be scheduled at this time, and proposing that the Company submit another status report within 30 days.

33. On April 30, 2020, the ALJs agreed with the Company's proposal and directed PPL Electric to submit its next status report by May 29, 2020.

34. On May 29, 2020, PPL Electric sent an email to the ALJs again advising them that settlement negotiations were still ongoing, stating that evidentiary hearings did not need to be scheduled at this time, and proposing that the Company submit another status report within 30 days.

35. Later on May 29, 2020, the ALJs agreed with the Company's proposal and directed PPL Electric to submit its next status report by June 26, 2020.

36. On June 26, 2020, PPL Electric sent the ALJs an email informing them that the parties were still engaging in settlement negotiations. However, since hearings were again being held in Commission proceedings, the Company requested dates that the ALJs would be available for rescheduled hearings. The ALJs responded by indicating that they were available for telephonic evidentiary hearings during the weeks of August 24 and 31, 2020.

37. After the parties provided their availability during those two weeks, the ALJs sent an email on July 13, 2020, informing the parties that the telephonic evidentiary hearings would be scheduled for September 2-3, 2020.

38. On July 14, 2020, a Notice was issued scheduling the telephonic evidentiary hearings for September 2-3, 2020.

39. On July 23, 2020, the ALJs issued an Interim Order directing the service of oral rejoinder outlines by 12:00 PM on August 26, 2020, directing the submittal of a witness matrix by 12:00 PM on September 1, 2020, and rescheduling the evidentiary hearings for September 2-3, 2020.

40. On August 26, 2020, PPL Electric served its written rejoinder testimony and exhibits.

41. On August 27, 2020, PPL Electric sent an email to the ALJs informing them that the Company, OCA, NRDC, and SEF had reached a settlement in principle of all issues and that Sunrun had represented to the parties that it would not file an objection to the Joint Petition for Settlement. The Company also requested that the September 2-3, 2020 hearings be canceled and that the testimony and exhibits be admitted into the record through stipulation.

42. On August 28, 2020, the ALJs issued an Interim Order canceling the September 2-3, 2020 hearings and directing the parties to file a Joint Stipulation for Admission of Evidence by September 3, 2020, and a Joint Petition for Settlement, including statements in support, by October 5, 2020. In addition, a Notice was issued canceling the September 2-3, 2020 hearings.

43. On September 3, 2020, PPL Electric, OCA, NRDC, and SEF filed a Joint Stipulation for Admission of Evidence.

44. On September 8, 2020, the ALJs issued an Interim Order granting the Joint Stipulation for Admission of Evidence.

45. The parties engaged in multiple rounds of discovery during the course of the proceeding.

46. On October 5, 2020, PPL Electric, OCA, NRDC, and SEF filed a Joint Petition for Settlement of All Issues. As stated in footnote 1 of that Joint Petition, Sunrun was not a party to the Settlement but would not be filing an objection to the Settlement.

47. On November 17, 2020, the Commission served the ALJs' Recommended Decision, which recommended approval of the Settlement without modification.

48. On December 17, 2020, the Commission rendered its unanimous Order adopting the Recommended Decision and approving the Settlement without modification. As such, the Commission: (a) granted the Company's DER Management Petition as modified by the terms and conditions of the Settlement; (b) granted PPL Electric's waivers of all or portions of Sections 75.13(c), 75.13(k), 75.22, 75.34, 75.35, 75.37, 75.38, 75.39, and 75.40 of the Commission's regulations and any additional waivers of regulations necessary to implement the DER Management Plan as modified by the terms and conditions of the Settlement; and (c) directed the Company to file a tariff supplement to become effective on one day's notice that is consistent with the *pro forma* tariff supplement attached as Appendix A to the Settlement.

49. On December 23, 2020, pursuant to Ordering Paragraph 4 of the Commission's Order, PPL Electric filed its compliance tariff supplement (*i.e.*, Supplement No. 311 to Tariff Electric – Pa. P.U.C. No. 201) to become effective on one day's notice. Supplement No. 311 established PPL Electric's Tariff Rule 12 setting forth certain rules and requirements for the Company's DER Management Plan, including the pilot program.

50. On January 6, 2021, the Commission issued a Secretarial Letter approving the Supplement No. 311.

51. On January 13, 2021, the Company filed a corrected Original Page 14C.3 for its compliance tariff supplement.

52. On January 19, 2021, PPL Electric filed its DER Management Pilot Implementation Plan pursuant to Paragraph 61 of the Commission-approved Settlement.

53. On February 8, 2021, the OCA, NRDC, SEF, and Sunrun filed Comments on the DER Management Pilot Implementation Plan.

54. On March 1, 2021, PPL Electric filed its Revised DER Management Pilot Implementation Plan.

55. On August 9, 2021, the OCA filed a Notice of Withdrawal of Appearance for Phillip D. Demanchick, Esquire.

56. On October 29, 2021, PPL Electric filed Supplement No. 322 to Tariff Electric Pa. P.U.C. No. 201 (“Supplement No. 322”) at Docket No. R-2021-3029322 to modify Rule 12 of its tariff, so that inverters must be certified to UL 1741-SB beginning January 1, 2023, instead of January 1, 2022, as stated originally in Rule 12 of the tariff. The Company filed this tariff supplement to give inverter manufacturers and DER installers more time to produce inverters and obtain inverters, respectively, that are certified to UL 1741-SB.

57. On January 13, 2022, the Commission entered an Order at Docket No. R-2021-3029322 approving Supplement No. 322.

58. On January 23, 2023, NRDC filed a Notice of Withdrawal of Appearance for Mark Szybist, Esquire.

59. On February 28, 2023, PPL Electric filed a Second Revised DER Management Pilot Implementation Plan.

60. On March 13, 2023, SEF filed a Notice of Withdrawal of Appearance for Kenneth L. Mickens, Esquire, and Entry of Appearance for Judith D. Cassel, Esquire and Micah R. Bucy, Esquire.

61. On April 13, 2023, Sunrun filed a Notice of Withdrawal of Appearance for James Van Nostrand, Esquire, and Entry of Appearance for Adam E. Gersh, Esquire.

62. On April 20, 2023, PPL Electric filed its 2023 DER Management Report, capturing Program Year Zero (January 1, 2021, to March 21, 2022) and Program Year 1 (March 22, 2022, to March 21, 2023) of the DER Management pilot program.

63. On August 8, 2023, SEF filed another Notice of Withdrawal of Appearance for Kenneth L. Mickens, Esquire, and Entry of Appearance for Judith D. Cassel, Esquire and Micah R. Bucy, Esquire.

64. On January 18, 2024, the JSPs filed their Petition for Rescission or Amendment of the Commission's Order. The JSPs also filed a Notice of Appearance for Bernice I. Corman, Esquire.

65. On January 29, 2024, PPL Electric filed an Answer opposing the JSPs' Petition for Rescission or Amendment.

66. On February 1, 2024, the OCA filed a Notice of Intervention and Public Statement, stating that it opposed the JSPs' Petition.

67. On February 16, 2024, the JSPs filed a "Reply" to PPL Electric's Answer opposing the JSPs' Petition for Rescission or Amendment.

## **II. MOTION TO STRIKE**

### **A. THE COMMISSION SHOULD STRIKE THE JSPS' "REPLY" BECAUSE SUCH A FILING CONTRAVENES THE COMMISSION'S REGULATIONS AND COMMISSION PRECEDENT**

50. The Commission should strike the JSPs' "Reply" to PPL Electric's Answer to the JSPs' Petition for Rescission or Amendment because it is an improper pleading and not authorized by the Commission's regulations.

51. Parties are only authorized to file a “Reply” to an Answer when the Answer pleads New Matter. *See* 52 Pa. Code § 5.1 (setting forth the permitted pleadings in Commission actions as including “[f]ormal complaint, answer, new matter and reply to new matter” and “[p]etition and answer”).

52. Apparently recognizing this hurdle, the JSPs allege that PPL Electric raised New Matter in its Answer and, therefore, they are entitled to file a Reply to the Company’s Answer. *See* JSPs’ “Reply,” pp. 1-2.

53. According to the JSPs, they needed to file the Reply “lest their failure to reply to each allegation be deemed in default and the allegations stated in PPL’s Answer be deemed admitted.” *Id.*, p. 2.

54. The JSPs’ position contravenes the Commission’s regulations and Commission precedent.

55. Under the Commission’s regulations, parties are only required to plead New Matter when they are raising affirmative defenses. *See* 52 Pa. Code § 5.62(b) (“An affirmative defense shall be pleaded in an answer or other responsive pleading under the heading of ‘New Matter.’”) (emphasis added).

56. Parties are not required to plead material facts as New Matter in their Answer. *See id.* (“A party may set forth as new matter another material fact which is not merely a denial of the averments of the preceding pleading.”) (emphasis added).

57. As such, PPL Electric was not required to plead any of the facts set forth in its Answer as New Matter.

58. Moreover, since the Company did not plead New Matter, the JSPs cannot be deemed to admit any allegations set forth in PPL Electric's Answer by failing to respond. *See id.* § 5.63.

59. Thus, nothing in the Commission's regulations authorized the JSPs to file a "Reply" to PPL Electric's Answer.

60. In addition, the Commission previously rejected essentially the same argument in *PGW*. *See* 2009 Pa. PUC LEXIS 596, at \*26-27.

61. In *PGW*, the OSBA filed an Answer to PGW's Answer to the OSBA's Petition for Reconsideration. *See id.* at \*2-3.

62. When trying to justify the filing of its Answer, the OSBA contended that PGW's Answer raised New Matter. *See id.* at \*26.

63. The Commission rejected the OSBA's position and granted PGW's Motion to Strike OSBA's Answer. *See id.* at 26-27.

64. In so doing, the Commission found the following:

We agree with PGW that its Response to the OSBA's Petition for Reconsideration did not raise any new matter, but merely responded to the issues raised in the OSBA's Petition. As stated by PGW, "PGW's answer [to the Petition for Reconsideration] merely requested that the Commission recognize the alternative basis for its order and made defensive arguments to support preserving the relief already granted to PGW." PGW Motion to Strike at 4-5. PGW did not request any affirmative relief; the relief had already been granted in our December 19 Order. We agree that there is no provision for an Answer by the OSBA under these circumstances.

*Id.*

65. Further, the Commission explained that even "if PGW's Response to the OSBA's Petition contained inappropriate arguments or 'New Matter,' the OSBA's remedy would have been to file a Motion to Strike, not an Answer under 52 Pa. Code § 5.63." *Id.*



66. Importantly, both Petitions for Reconsideration (like the one filed in *PGW*) and Petitions for Rescission or Amendment (like the one filed by the JSPs) are Petitions filed pursuant to Section 703(g) of the Public Utility Code and Section 5.572 of the Commission's regulations. *See* 66 Pa. C.S. § 703(g); 52 Pa. Code § 5.572.

67. As such, it makes no difference that *PGW* filed an Answer to OSBA's Petition for Reconsideration while PPL Electric filed an Answer to the JSPs' Petition for Rescission or Amendment.

68. Thus, the Commission should adhere to its precedent in *PGW* and strike the JSPs' "Reply" to PPL Electric's Answer.

69. For these reasons, PPL Electric respectfully requests that the Commission strike the JSPs' "Reply" to the Company's Answer and disregard that "Reply" when adjudicating the JSPs' Petition for Rescission or Amendment.

**III. CONCLUSION**

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission strike the “Reply” filed by the Joint Solar Parties and disregard the “Reply” when ruling on the Joint Solar Parties’ Petition for Rescission or Amendment, as described in this Motion.

Respectfully submitted,



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Dated: March 7, 2024

*Attorneys for PPL Electric Utilities Corp.*

**VERIFICATION**

I, SALIM SALET, being the VP-TD&S Engineering & Construction at PPL Services 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: 03/07/2024

  
Salim Salet (Mar 7, 2024 14:44 EST)  
Salim Salet