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March 8, 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**

Dear Secretary Chiavetta:

On March 7, 2024, Tesla, Inc. (“Tesla”), Sun Directed, American Home Contractors (“AHC”), Sunrun, Inc. (“Sunrun”), and the Solar Energy Industries Association (“SEIA”) (collectively, “Joint Solar Parties”) filed a letter (“Letter”) related to their Petition for Rescission or Amendment of PPL Electric’s Distributed Energy Resources Management Pilot and Request for Expedited Proceeding (“Petition”).¹ In their Letter, the Joint Solar Parties request that the Petition be assigned immediately to an Administrative Law Judge for hearing. As explained herein, the Commission should deny the Joint Solar Parties’ unjustified request because it conflicts with well-established law governing petitions for rescission or amendment.

¹ In the Petition, the Joint Solar Parties request that the Pennsylvania Public Utility Commission (“Commission”) take the radical step of rescinding 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 referenced proceeding, or, alternatively, amending the Order to create an opt-out for customers participating in the Distributed Energy Resources (“DER”) Management pilot program. The Joint Solar Parties also request that the Commission grant expedited review of their Petition. For the reasons set forth in PPL Electric’s Answer to the Petition filed on January 29, 2024, the JSPs’ Petition should be denied.

The Joint Solar Parties are not entitled to a hearing before the Commission determines whether their Petition establishes a colorable claim under the *Duick* standard.² Contrary to the Joint Solar Parties' assumption, this threshold determination does not require a hearing.³ Rather, the Petition must stand for itself and demonstrate that the strict *Duick* standard for granting the Petition has been met.⁴ This procedural backstop exists for a reason—setting a matter for hearing without an initial ruling on whether a petition for rescission or amendment has demonstrated the need for further proceedings would constitute a *de facto* granting of that petition. Such a process would eliminate the procedural safeguards of *Duick* and allow any such petition, regardless of its viability or reasonableness, to disturb a final Commission Order.⁵ Shortcutting this procedural backstop

² See *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559, 1982 Pa. PUC LEXIS 4 (Order dated Dec. 17, 1982) (“*Duick*”). See also *Interstate Gas Supply Inc., et al. v. Metropolitan Edison Co., et al.*, 2022 Pa. PUC LEXIS 125, Docket Nos. C-2019-3013805, et al., at *9 (Order entered April 14, 2022) (“Application of the considerations of *Duick* essentially require a two-step analysis . . . The first step is that we determine whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. The second step of the *Duick* analysis is to evaluate the new or novel argument, or overlooked consideration that is alleged, in order to determine whether to modify our previous decision. We will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order.”)

³ See, e.g., *Application of Tajoma, Inc.*, 2023 Pa. PUC LEXIS 108, Docket No. A-2016-2575133 (Order entered May 18, 2023) (denying petition for rescission without a hearing); *Petition of Daniel J. Reith, LLC for Rescission of the Pa. PUC’s Final Order entered July 8, 2022 and Reinstatement of the Company’s License to Operate as a Broker/Marketer of Electric Generation Supplier Services*, 2022 Pa. PUC LEXIS 370, Docket No. A-2019-30008014 (Order entered November 10, 2022) (denying petition for rescission without a hearing); *Application of Abbas Transp. Servs., LLC*, 2022 Pa. PUC LEXIS 348, Docket No. A-2018-3003506 (Order entered October 27, 2022) (denying petition for rescission without a hearing); *Pa. PUC v. C Three Logistics LLC*, 2022 Pa. PUC LEXIS 209, Docket No. C-2021-3024623 (Order entered June 16, 2022) (denying petition for rescission without a hearing); *Karen Feitt v. Peoples Natural Gas Co. – Equitable Division*, 2020 Pa. PUC LEXIS 514, Docket No. F-2018-3003833 (Order entered October 8, 2020) (denying petition for rescission without a hearing); *Supplier Door-to-Door and In-Person Marketing Moratorium; Proclamation of Disaster Emergency – COVID-19*, 2020 Pa. PUC LEXIS 396, Docket No. M-2020-3019254 (Order entered July 16, 2020) (denying petition for partial rescission without a hearing); *Petition of PPL Electric Utils. Corp. for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021*, Docket No. P-2016-2526627 (Order entered January 26, 2017) (denying petition for rescission without a hearing); *Brinks, Inc. v. Pa. PUC*, 328 A.2d 582 (Pa. Cmwlth. 1974) (denying petition for rescission without hearing).

⁴ See *Duick* at 559 (“Parties . . . , cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them. . . . What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter was either unwise or in error.”) (internal quotation and citation omitted).

⁵ See *City of Pittsburgh v. Pa. Dep’t of Transportation*, 416 A.2d 461 (Pa. 1980) (finding that a petition to rescind or modify a final Commission decision may only “be granted judiciously and under appropriate circumstances,” because such an action results in the disturbance of final orders); see also *StoneyBank Development LLC v. The Walnut Hill Util. Co.*, 2022 Pa. PUC LEXIS 317, Docket No. C-2020-3022179, at *21 (Order entered October 27, 2022) (“We are cognizant of the importance of finality of the orders issued by this agency and we do not act with haste to grant or deny a petition for rescission or amendment of our previous orders . . . we are careful to exercise that discretion with deliberateness in only those cases meriting such relief.”).

would also unreasonably tax the Commission's and the affected parties' time and resources by subjecting them to unwarranted further hearings.⁶

Accordingly, the Commission must follow well-established precedent and first consider whether the Joint Solar Parties have successfully argued that rescission or amendment of its Order is warranted under the applicable *Duick* standard. As laid out in detail in PPL Electric's Answer to the Petition, the JSPs' Petition falls woefully short of this standard, and the JSPs' flawed factual and legal arguments do not justify the extreme remedy of disturbing a unanimous Order that approved a Settlement reached by all active parties in the above referenced proceeding.⁷

Further, the Commission need only hold a hearing before granting a petition for rescission or amendment, not before denying such a petition.⁸ Therefore, in the unlikely event that the Commission finds the JSPs' Petition meets the stringent *Duick* standard, a further hearing would be required under Section 703(g) of the Public Utility Code, to protect the due process rights of PPL Electric and the other signatories to the Settlement.⁹ Section 703(g) of the Public Utility Code safeguards the interests of parties who have litigated issues and received a final order from the Commission from the rescission or amendment of that final order without notice and an opportunity to be heard.¹⁰ The Commonwealth Court has held that "the Commission must conduct an evidentiary hearing before rescinding or amending a prior order" under Section 703(g) of the Public Utility Code.¹¹ When a Petition for Rescission or Amendment is opposed, the Commission

⁶ Such an outcome is more egregious here, given that one of the JSPs, Sunrun, actually intervened in this proceeding and, despite having the opportunity to submit testimony or object to the Settlement, chose not to do so. The JSPs, including Sunrun, are not entitled to further hearings simply because they filed the Petition for Rescission or Amendment.

⁷ See *Feleccia v. PPL Elec. Utils. Corp.*, Docket No. C-20016210 (Order entered Mar. 7, 2003) (The Commission can only rescind or amend a prior order when there is "newly discovered evidence, a substantial change in circumstances, or an error of fact or law") (citation omitted); see also *Armstrong Telecoms., Inc. v. Pa. PUC*, 835 A.2d 409, 420 (Pa. Cmwlth. 2003) ("*Armstrong*") (citing *Popowsky v. Pa. PUC*, 805 A.2d 637 (Pa. Cmwlth. 2002)) (finding that the Commission can only rescind or amend a prior order after "conduct[ing] an evidentiary hearing" when the request to rescind or amend the order is opposed).

⁸ See, e.g., *StoneyBank Development LLC v. The Walnut Hill Util. Co.*, 2022 Pa. PUC LEXIS 317, Docket No. C-2020-3022179, at *21, 25 (Order entered October 27, 2022) (granting petition for rescission based on a finding of a "substantial change in circumstances" and referring the matter to the Office of Administrative Law Judge "for further proceedings as deemed necessary and appropriate"); *Colby Simpkins v. PECO Energy Co. – Electric*, 2023 Pa. PUC LEXIS 254, Docket No. C-2022-3036798 (Order entered September 21, 2023) (granting petition for rescission and requiring a further evidentiary hearing be held pending timely request by prevailing party); *Priority 1 bridge repairs in response to a recent bridge inspection at the public crossing (DOT 510 521 Y), where Washington Street crosses, above grade, the tracks of Norfolk Southern Railway Company, Port Authority of Allegheny Count East Busway and Waverly Avenue located in the Borough of Swissvale, Allegheny County and exemptions from the minimum side clearances required by 52 Pa. Code, Section 33.122*, 2022 Pa. PUC LEXIS 347, Docket No. A-2022-3033069 (Order entered October 27, 2022) (granting petition for rescission and referring the matter to the Commission's Rail Safety Section for further proceedings).

⁹ Section 703(g) provides that "[t]he commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it . . ." 66 Pa. C.S. § 703(g).

¹⁰ "Merely allowing for 'notice and comment' d[oes] not satisfy Section 703 hearing requirements or due process." *Popowsky v. Pa. PUC*, 805 A.2d 637, 643 (Pa. Cmwlth. 2002) (citing *Scott Paper Co. v. Pa. PUC*, 558 A.2d 914 (Pa. Cmwlth. 1989)), *allowance of appeal denied*, 847 A.2d 60 (Pa. 2004).

¹¹ *Armstrong*, 835 A.2d 409, 420 (citation omitted).

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cannot grant that petition without holding “a full hearing, including the development of a record and a decision by the Commission based on that hearing with full findings, in other words, a new adjudication”¹² If the Commission were to grant such a petition “without the opportunity to present evidence or cross-examine witnesses,” there would be no “meaningful opportunity to be heard as provided in Chapter 7 of the Public Utility Code or due process.”¹³

For these reasons, the Joint Solar Parties are not entitled to a hearing merely because they have filed their Petition.¹⁴ As explained above, well-established law requires an initial determination that the Petition has met the *Duick* standard of review. Then, if the Commission were to find that the Joint Solar Parties met that initial threshold, further hearings would be required to preserve the due process rights of PPL Electric and the other signatories to the Settlement. However, nothing prevents the Commission from denying the JSPs’ Petition without holding a hearing.

Respectfully submitted,



Devin Ryan

DTR/dmc
Enclosures

cc: Certificate of Service

¹² *Popowsky*, 805 A.2d at 643.

¹³ *Id.*

¹⁴ This situation differs from the letter that PPL Electric filed in this proceeding on August 22, 2019, which requested that the Company’s DER Management Petition be assigned for hearing and disposition before an administrative law judge. The DER Management Petition initiated a new Commission proceeding and was filed pursuant to Sections 5.41, 5.43, 53.3, 53.31, and 75.13(k) of the Commission’s regulations. *See* 52 Pa. Code §§ 5.41, 5.43, 53.3, 53.31, 75.13(k). Therefore, under due process, PPL Electric was entitled to submit testimony and cross-examine opposing parties’ witnesses before the Commission ruled on the DER Management Petition. In contrast, the JSPs’ Petition for Rescission or Amendment seeks to rescind or modify a final Commission Order and was 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. Because the JSPs’ Petition seeks to disturb a final Commission Order, which approved a Settlement in a litigated proceeding where a hearing was scheduled, and because notice and an opportunity to be heard on the DER Management Petition was already provided, the JSPs are not entitled to a hearing before the Commission rules on their Petition for Rescission or Amendment.

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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