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September 30, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

RE: TotalEnergies Distributed Generation USA, LLC v. PPL Electric Utilities, Inc.;
Docket No. _____; **PETITION OF TOTALENERGIES
DISTRIBUTED GENERATION USA, LLC FOR INTERIM EMERGENCY
ORDER**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Petition of TotalEnergies Distributed Generation USA, LLC ("TotalEnergies") for Interim Emergency Order. A copy of this Petition has been served as indicated on the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "T. Stewart", is written over a large, stylized blue scribble.

Todd S. Stewart
*Counsel for TotalEnergies Distributed
Generation USA, LLC*

TSS/jld
Enclosure
cc: Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA ELECTRONIC MAIL ONLY

Michael J. Shafer
PPL Services Corporation
Two North Ninth Street
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Counsel for PPL



Todd S. Stewart

Dated: September 30, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TotalEnergies Distributed Generation USA, LLC,	:	
	:	
Complainant,	:	
	:	Docket No. _____
v.	:	
	:	
PPL Electric Utilities, Inc.,	:	
Respondent.	:	

**PETITION OF
TOTALENERGIES DISTRIBUTED GENERATION USA, LLC
FOR INTERIM EMERGENCY RELIEF**

TotalEnergies Distributed Generation USA, LLC (“TotalEnergies”), by and through its Counsel, HMS Legal LLP, and pursuant to 52 Pa. Code § 3.6, hereby submits this Petition for Interim Emergency Relief in the form of an Order Staying the application of PPL Electric Utilities, Inc.’s (“PPL”) Customer Generator approval process, and specifically, its requirement for a 25% non-refundable deposit to secure a position in the queue and to be able to continue the interconnection process. TotalEnergies has simultaneously filed along with this Petition, a Formal Complaint addressing the same subject matter, and contending that PPL’s adoption of the new process, the non-refundable deposit in particular, was not in compliance with the law, and that the process and its demands are unreasonable and illegal and in violation of the Pennsylvania Public Utility Code, Sections 1301 and 1501, as well as the Commission’s Regulations.

PPL's new process for Customer Generators approvals demands a 25% non-refundable deposit, that is not cost based, and which PPL may use to cover expenses or may simply retain depending on the circumstances. In either case, it is a rate that has not been approved by the Commission and is therefore in violation of the law.¹ Moreover the rate itself is unjust and unreasonable. It is the demand and collection of this rate that TotalEnergies seeks to enjoin pending the outcome of its Formal Complaint. In support of its Petition, Total states and avers as follows:

1. TotalEnergies Distributed Generation USA, LLC is the developer of renewable energy projects in the United States and has made several customer generator applications for net metered solar generating facilities in the PPL service area.

2. PPL is a Public Utility as that term is defined in the Pennsylvania Public Utility Code ("Code"), 66 Pa. C.S. § 102. PPL also is an electric distribution company ("EDC") as that term is defined in 66 Pa. C.S. § 2803.

3. TotalEnergies is represented in this matter by the following Counsel:

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4. As discussed in the attached Verified Statement, executed by Frederic A. Potts, III, the President and Chief Executive Officer of TotalEnergies Distributed Generation USA, LLC., PPL is demanding that TotalEnergies pay deposits for 18 projects in the amount of \$5,929,625, on a non-refundable basis. That means that if any of the projects is not completed,

¹ A violation of the law is per se irreparable harm. *Pa. PUC v. Israel*, 356 Pa. 400, 52 A.2d 317 (1947).

for any reason, PPL retains the deposit for that project, even if it has not incurred any of the expenses that the deposit would otherwise have offset. In that sense, the deposit is a punitive rate demanded by a public utility that has not been subjected to the Commission's review and approval and is therefore illegal. There are many other reasons why the rate/deposit is illegal, which are discussed herein and in Mr. Potts' Statement. Because the first of the deposits for the recently noted projects is due in a mere two weeks, relief is required immediately to prevent the irreparable harm. If PPL is permitted to impose this rate on TotalEnergies, it will be harmed irreparably in that TotalEnergies will be required to agree to an illegal demand and pay an illegal, unreasonable and unapproved rate/deposit that will place a substantial amount of its capital at unnecessary risk. As discussed herein, and in total, this situation meets all four criteria for the issuance of an Emergency Interim Order, the purpose of which would be to preserve the status quo ante until the Commission has an opportunity to adjudicate the legality of PPL's rate/deposit.

5. **52 Pa. Code § 3.6(b)(1). The Petitioner's right to relief is clear.** PPL adopted a "new" process for processing applications for customer-generators in or around May 2024, in which it changed the terms of its Notification of Customer Intent ("NoCI") to require a deposit amounting to 25% of the total interconnection upgrade cost identified in each project's Interconnection Impact Review ("IIR") and requiring NoCI to be executed and returned within 30 day and the deposit be paid within 45 days of receiving the IIR. Throughout, August and September 2024, TotalEnergies received notification from PPL that they had studied 18 projects and that a 25 % non-refundable deposit was payable. The total amount of deposit for the 18 projects was indicated as \$5,929,625.00. A non-refundable deposit that is not based upon ensuring payment for certain costs that might be put at risk, is a rate or charge.² In this case, PPL is demanding that TotalEnergies pay a non-refundable charge in order to secure the costs of

² 66 Pa. C.S. § 102 (Rate).

completing the detailed engineering for its projects and eventually, for securing equipment and service to perform any needed upgrades. There is no reason that 25% of the entire amount be paid at once, and no reason why it should be non-refundable. The Public Utility Code requires that any rate charged by a public utility be just and reasonable and be approved by the Commission, and that service provided by utilities be reasonable. PPL's demand has not been approved by the Commission, so there has been no consideration of whether the 25% non-refundable deposit rate is just or reasonable – it is neither. Moreover, PPL did not adhere to the regulations that require it to file its requirements for net metering projects, including the non-refundable deposit in its tariff.³ Nor did PPL seek to have the Commission approve the forms that it uses for the small generators whose projects these are.⁴ To the extent that PPL contends that the deposit is not a rate, but rather a fee, the regulations provide that all fees be approved by the Commission.⁵ Accordingly, not only is PPL's new process illegal, but the manner in which it was imposed also violates multiple Commission Regulations. At a minimum, PPL should have sought Commission approval for these changes before it unilaterally imposed them on customer generators, the law is clear, as is the right to relief.

6. **52 Pa. Code § 3.6(b)(2). The need for relief is immediate.** As discussed in the accompanying affidavit, TotalEnergies has recently received notification from PPL for 18 projects that the illegal 25% deposit in a total amount of \$5,929,625.00 due between October 11, 2024, and November 11, 2024. Despite its efforts to negotiate a solution with PPL, which remained immovable, if it does not comply with PPL's illegal and unwarranted demands and sign the Notification of Customer Intent ("NoCI") and pay the 25% deposit, it will lose its place in the queue, which means its projects go to the back of the line, with potentially greater

³ 52 Pa.Code § 75.13(c).

⁴ 52 Pa.Code § 75.22.

⁵ 52 Pa. Code §75.33.

interconnection costs, if interconnection is possible at all. The loss of these projects would be financially damaging to TotalEnergies, which cannot insure against such risk and dramatic loss of capital, which in turn endangers its entire business. Alternatively, TotalEnergies could sign the NoCI and place itself in the same situation – the very real possibility that it will be deprived of its capital without recourse due to circumstances it cannot control – the 25% would remain in PPL’s pocket regardless of whether the project is finally built. TotalEnergies is in dire need for the Commission to enforce the law and not to allow PPL to act as if the law does not apply to it. In this case, enforcing the law means restraining PPL from demanding its illegal non-refundable deposits. If that does not happen soon, within the next several weeks, TotalEnergies will be forced to make a selection between two bad choices that each have the very real likelihood of causing harm to its business.

7. **52 Pa. Code § 3.6(b)(3). The injury would be irreparable if relief is not granted.** There can be no doubt that there will be substantially increased risk of the loss of capital if PPL is not restrained from enforcing its illegal 25% non-refundable deposit requirement. That loss would be irreparable in that there would be no recourse for TotalEnergies should the loss occur – no way to seek money damages from anyone. For example, if TotalEnergies were to pay the deposit and the law were to change due to no act of TotalEnergies, it could stand to lose over five million dollars, but it would have no recourse. Likewise, if it could not obtain a needed permit for a project because a local municipality changed a zoning ordinance in an unfavorable manner, it would lose its deposit and have no recourse. The same would be true for its ability to obtain critical environmental permits. There is no realistic scenario where TotalEnergies would lose its deposit per PPL’s rules, that it would be TotalEnergies’ fault or where TotalEnergies would have recourse against the entity that caused its

project to fail. It appears that PPL built that quandary into its calculus, in an effort to impose as much risk as possible on developers such as TotalEnergies so as to make projects less likely to be proposed. In other words, PPL's rule appears to have been constructed to place projects at maximum risk, and which makes the harm irreparable. The fact that PPL has unilaterally imposed its non-refundable deposit requirement in blatant violation of the law also makes it irreparable. Longstanding Pennsylvania law is clear that for purposes of injunctive relief, a violation of the law is *per se* irreparable harm. [Pa. PUC v. Israel, 356 Pa. 400, 52 A.2d 317 \(1947\)](#). PPL's deposit demand is calculated to impose maximum risk and so is based upon the total expense of a project, even though PPL will not be at risk for most of those expenses for years, thus increasing the likelihood that a project failure will leave unspent money for PPL to pocket. That is also the essence of an unjust and unreasonable rate – a rate that was not placed in a tariff and not subject to Commission approval. 66 Pa. C.S. §§ 1301 and 1302. The Code requires that all rates demanded by a utility be approved by the Commission and be placed in tariffs. PPL's 25% deposit profit making requirement is neither approved nor contained in a tariff. The Commission's Regulations require that fees charged to customer generators for approval of interconnection be approved by the Commission, PPL's were not. 52 Pa Code 75.33. The Regulations also require that the agreements to be used for interconnection be approved by the Commission and that the rules for interconnection be in the utility's tariff, again, PPL's agreements were not approved and are not in its tariff. At every step where PPL should have followed the rules, it did not, thus depriving the customer generators who are subject to its illegal demands, of the opportunity to contest such demands in a proceeding where PPL bears the burden of proving the justness and reasonableness of its requirements and forcing a complaint to be filed. Rather, PPL implemented its "new" requirements without approval and in blatant

violation of the law. The deposit requirement was designed and would impose irreparable harm on its own, but because it was imposed illegally, the harm is also *per se* irreparable.

8. **52 Pa. Code § 3.6(b)(4). The relief requested is not injurious to the public interest.** No party will be harmed if PPL's required deposits are made to be refundable. PPL will still have security in place to ensure that costs it actually incurs are compensated, as opposed to creating a windfall opportunity for PPL to reap the benefit of a project failure by retaining the deposit without regard to actual expenses. Contrary to PPL's excuse for refusing to negotiate a reasonable alternative to a non-refundable deposit, parties behind TotalEnergies in the queue would not be harmed because PPL could, with Commission approval, implement a process that would impose deadlines for projects at each critical point – to pay deposits as needed for the next stage and to legally engage for the next steps, that would force projects to continue forward motion, or lose their place in line. In such a process there could be a requirement that only the unspent portions of deposits would be refundable, so suppliers would remain at risk for moneys that were spent on its behalf, but not for dollars that were not yet spent. Rather than a fair and balanced approach, PPL's process based the risk on total project cost, and thus puts a large sum at risk, period. Imposing a rational process and denying PPL's ability to put such large sums of capital at risk would likewise not harm ratepayers because any actual risk would remain covered by a deposit and would not cause any additional non-compensated costs for PPL. Similarly, PPL would not be harmed because its actual expenses would still be insured with a deposit, the only difference being that PPL could not unilaterally retain the deposit as a punishment for a project failure. In short, no party would be harmed by rejecting PPL's single-minded effort to increase project risk by putting substantial developer capital at risk in the form of a non-refundable deposit.

9. TotalEnergies is requesting in its Complaint that the Commission permanently bar PPL from imposing substantial non-refundable deposits on customer generators. In the instant Petition, it seeks to have PPL restricted from making any deposit non-refundable, at least until the Commission has an opportunity to review and rule on the justness and reasonableness of PPL's demand in a complaint proceeding. As discussed herein, TotalEnergies' request checks all four boxes for interim relief and should be granted.

Respectfully submitted,



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*Counsel for TotalEnergies Distributed
Generation USA, LLC*

DATED: September 30, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TotalEnergies Distributed Generation USA, LLC,	:	
	:	
Complainant,	:	
	:	Docket No. _____
v.	:	
	:	
PPL Electric Utilities, Inc.,	:	
Respondent.	:	

**VERIFIED STATEMENT OF
TOTALENERGIES DISTRIBUTED GENERATION USA, LLC**

I, Frederic A. Potts, III, President and Chief Executive Officer of TotalEnergies Distributed Generation USA, LLC, having been duly sworn, and being authorized to do so, hereby state and aver as follows:

1. TotalEnergies Distributed Generation USA, LLC (“Total”) is a solar developer and is the sole member of TotalEnergies Distributed Generation Assets USA, LLC which is the sole member of limited liability companies which are developing 30 net metering projects that currently have interconnections applied-for in Pennsylvania with 30 such projects located in the PPL service territory.

2. The 30 projects in the PPL service territory have interconnections applications which were submitted in February 2024. Each project is approximately 3 megawatts in size.

3. Total attended a seminar put on by PPL on May 1, 2024 at which we were informed that PPL unilaterally was changing the terms of its Notification of Customer Intent (“NoCI”) and requiring a deposit amounting to 25% of the interconnection upgrade cost identified in each

project's Interconnection Impact Review ("IIR") and requiring that the deposit be paid within 45 days of receiving the IIR. When we received our first IIR and NoCI on August 13, 2024 we became aware that the deposit would be non-refundable.

4. Throughout, August and September 2024, we received notification from PPL that they had studied 18 projects and that a 25 % non-refundable deposit was payable. The total amount of deposit for the 18 projects was indicated as \$5,929,625.00.

5. Payment of the deposit prior to the projects being approved and permitted places incredible risk on Total Energies. The deposits are calculated in the total project costs which include the more detailed engineering work and any needed equipment and labor, and produce millions of dollars in deposits, even though the engineering work will take a long time and the costs are in the tens of thousands of dollars as opposed to millions PPL has demanded. In other words, not only are the deposits unreasonable because they are non-refundable, but also because they are demanded for costs that won't be incurred for a relatively long time. Such a deposit takes vital Total capital out of use which could otherwise earn interest or be deployed to other aspects of our business. Furthermore, requiring that such a deposit be non-refundable as well puts at risk a forfeiture of such deposit as there are other uncertainties beyond interconnection which may negatively impact the viability of the projects at play. Such risks include, but are not limited to, the following:

a. Change in law. Should the law change and make these projects no longer financially viable, we would lose monies far in excess of the costs incurred by PPL to complete the each IIR study. This a punitive measure without justification;

b. Inability to permit a project. Should we be unable to obtain a permit to construct any project, we would forfeit our deposit, which is completely disproportionate

to the actual cost of any upgrades that in fact PPL then will not complete, without any recourse; and

c. The cost of obtaining and complying with environmental and other required approvals from local, state and Federal agencies.

6. To the extent that any of these risks events occur, they will irreparably impact Total because, for example, we may not be able to sue the Pennsylvania General Assembly for changing the law and to seek damages for projects we could not complete.

7. PPL is demanding that we sign the documents and pay a deposit immediately, a process we believe to be illegal, or lose our position in the queue. The deadline is fast approaching. Without an order staying the process, we will be forced to decide between signing what we believe to be an illegal contract and paying an illegal non-refundable deposit or losing the substantial investment we have already made in these projects and losing the opportunity to develop these projects in the future.

Further affiant sayeth nought.

Date: September 30, 2024

Signed by:
Signature: Frederic A. Potts III
A824C83C94364B6...
Frederic A. Potts, III