
Devin Ryan

dryan@postschell.com
717-612-6052 Direct
717-731-1985 Direct Fax
File #: 208626

October 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 TotalEnergies Distributed Generation USA, LLC for Interim Emergency Order
Docket No. P-2024-3051440

Dear Secretary Chiavetta:

Attached for filing please find the Answer of PPL Electric Utilities Corporation to the Petition of TotalEnergies Distributed Generation USA, LLC for Interim Emergency Order in the above-referenced proceeding.

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

Respectfully submitted,



Devin Ryan

DR/dmc
Attachments

cc: Certificate of Service
Honorable Steven K. Haas (*via Email sthaas@pa.gov*)
Honorable F. Joseph Brady (*via Email fbrady@pa.gov*)

CERTIFICATE OF SERVICE

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

Todd S. Stewart, Esquire
HMS Legal LLP
501 Corporate Circle, Suite 302
Harrisburg, PA 17110
tsstewart@hmslegal.com

Dated: October 7, 2024



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of TotalEnergies Distributed :
Generation USA, LLC for Interim : Docket No. P-2024-3051440
Emergency Order :

**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION TO
THE PETITION OF TOTALENERGIES DISTRIBUTED GENERATION USA, LLC
FOR INTERIM EMERGENCY RELIEF**

TO ADMINISTRATIVE LAW JUDGES STEVEN K. HAAS AND F. JOSEPH BRADY:

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby files this Answer to the Petition of TotalEnergies Distributed Generation USA, LLC, (“TotalEnergies” or “Petitioner”) for an Emergency Order (“Emergency Petition” or “Petition”) pursuant to 52 Pa. Code § 3.6(c). TotalEnergies filed its Petition on September 30, 2024, along with a Formal Complaint against PPL Electric at Docket No. C-2024-3051475 (“Formal Complaint”) with the Pennsylvania Public Utility Commission (“Commission”), and requests that the Commission issue an emergency order restraining PPL Electric from “making any deposit non-refundable” for interconnection applicants seeking to interconnect alternative energy systems and participate in net metering. (Petition, p. 10.)

TotalEnergies’ request for interim emergency relief should be denied. As a threshold matter, the refundability issue is not ripe for interim emergency relief. TotalEnergies does not seek to enjoin the collection of the 25% deposit; it only requests that such deposit be declared refundable as opposed to non-refundable. However, the only way the deposit’s refundability becomes an issue is if TotalEnergies fails to move forward with the project and demands a refund and there are unspent funds to refund. Here, TotalEnergies has not paid the deposit, nor has it

sought a refund of any portion of the amount due to PPL Electric. By all indications, and as represented in TotalEnergies' Petition and Formal Complaint, TotalEnergies fully intends to move forward with the project. If that were to change before the Formal Complaint is adjudicated, then TotalEnergies can move for interim emergency relief at that time and request that it be refunded the deposit pending the Commission's final disposition of the Formal Complaint. In the meantime, unless and until TotalEnergies decides not to move forward with the project, it is not harmed by the non-refundability of the deposit.

In addition, TotalEnergies' request fails to meet the standard for interim emergency relief under Section 3.6 of the Commission's regulations. *See* 52 Pa. Code § 3.6. To establish the need for interim emergency relief, a party must prove: (1) the right to relief is clear; (2) the need for relief is immediate; (3) the injury would be irreparable if relief is not granted; and (4) the relief requested is not injurious to the public interest. *Id.* § 3.6(b)(1)-(4).

First, TotalEnergies fails to establish that its need for relief is immediate because, as explained previously, the refundability issue does not warrant interim emergency relief. All the "risks" identified by TotalEnergies are speculative. Also, TotalEnergies could seek interim emergency relief later when it no longer wants to pursue the project. Alternatively, if the Commission were to find that PPL Electric must refund any deposit to TotalEnergies, either through adjudicating a subsequent petition for interim emergency relief or through adjudicating TotalEnergies' Formal Complaint, the Company would be required to comply with that Order, assuming no reconsideration, stay, or appeal is granted.

Second, there is no irreparable harm to prevent by granting TotalEnergies' Petition. As noted previously, the financial harms alleged by TotalEnergies are speculative "risks." Such speculative and financial harms do not constitute irreparable harms. In fact if TotalEnergies

prevails on its Formal Complaint and if its project does not move forward, then the Commission can order a refund. If TotalEnergies' projects do move forward, then the refundability issue becomes moot because the deposit will go toward the system upgrade costs that are needed to interconnect the project with PPL Electric's distribution system.

As such, TotalEnergies' irreparable harm argument hinges on the alleged unlawfulness of PPL Electric's requirement for a 25% non-refundable deposit. However, PPL Electric is authorized to charge interconnection applicants for the costs to study, engineer, design, and construct the distribution system upgrades necessary to facilitate the alternative energy systems' interconnection. *See, e.g.*, 52 Pa. Code §§ 75.39(d)(2), (e)(1), (e)(4). In fact, under the Level 3 interconnection review procedures, which apply to all of TotalEnergies' projects currently in the queue, the applicant must agree "to pay for the interconnection facilities and distribution upgrades identified in the interconnection facilities study." *Id.* § 75.39(e)(4). A 25% non-refundable deposit is designed to cover the costs PPL Electric incurs to develop the engineering and design of the distribution system upgrades, to procure the long-lead time equipment that is needed to construct those upgrades, and to project manage the application, while helping ensure that the interconnection applicant lives up to its agreement to pay for the interconnection facilities and distribution upgrades identified by the Company.

Furthermore, TotalEnergies fails to distinguish the "interconnection fees" from the payment for the costs of "interconnection facilities and distribution upgrades." *Compare* 52 Pa. Code § 75.33 (interconnection fees and forms), *with* 52 Pa. Code § 75.39(e)(4). As such, Section 75.33 does not require the Commission to determine the appropriate distribution system upgrade costs for Levels 1, 2, 3, and 4 interconnection reviews, only the "interconnection fees." *Id.* § 75.33. In this case, PPL Electric's charges the interconnection application fees set forth in the

Commission's policy statement, which the Commission has "deemed appropriate for use by electric distribution companies when processing interconnection applications." *Id.* § 69.2104.

Third, the public interest would be harmed by granting TotalEnergies' request for interim emergency relief. The Commission should want "shovel ready" projects in the Company's interconnection application queue. By requiring a 25% non-refundable deposit, PPL Electric helps encourage the submission and processing of the projects that are ready to move forward. Without this deposit requirement, interconnection applicants that still need to secure permits and zoning approvals, such as TotalEnergies, are incentivized to file their interconnection applications as soon as possible to establish their position in the queue. When interconnection projects in the queue are canceled, it requires the Company to restudy and reallocate system upgrade costs to interconnection applicants further down in the queue. PPL Electric is not compensated for the cost to restudy these applications, and other interconnection applications are unexpectedly delayed due to the time needed to restudy. The interconnection studies for other projects in the queue depend on whether TotalEnergies moves forward with its project and pays for the distribution system upgrades. Indeed, the Company's studies assume that the projects earlier in position in the queue will move forward. Therefore, if TotalEnergies backs out, the distribution system upgrades needed to interconnect other projects in the queue, and the associated costs those interconnection applicants must pay, can be affected. Thus, the Company's deposit requirement encourages only those interconnection applications committed to completing their project to proceed past the 25% phase.

Finally, many of the risks identified by TotalEnergies could be mitigated by TotalEnergies. The Petition references the approximately \$5.9 million of deposits that are owed in the near future. What is not included is that TotalEnergies submitted 30 interconnection applications for 82.3 MW

of generation in a two-week time period in February 2024. If TotalEnergies is worried about the amount of capital it is putting at risk, it could have spread its applications out. Additionally, TotalEnergies references the uncertainties of obtaining zoning and environmental permits associated with the projects. However, nothing is preventing TotalEnergies from obtaining applicable land development approvals prior to applying to interconnect with PPL Electric to minimize project uncertainty. TotalEnergies should not accuse PPL Electric of creating unreasonable risk when TotalEnergies has not taken steps available to it to minimize those very risks about which it is concerned.

In opposition to the Petition, PPL Electric submits the following:

ANSWER

1. Pursuant to Section 3.6(c) of the Commission’s regulations, “[a]llegations set forth in the petition shall be deemed to have been denied by the opposing parties, and an answer is not required.” 52 Pa. Code § 3.6(c). As such, PPL Electric’s filing of this Answer should not be deemed an admission of any allegations contained in the Petition. Except where otherwise expressly stated, PPL Electric denies each paragraph contained in the Petition.

2. The Company submits that the Commission should deny TotalEnergies’ Petition because TotalEnergies’ request for interim emergency relief: (1) is not ripe; and (2) does not meet the grounds for interim emergency relief.

A. TOTALENERGIES’ REQUEST FOR INTERIM EMERGENCY RELIEF IS NOT RIPE

3. The Petition should be denied because TotalEnergies’ request for interim emergency relief is not ripe.

4. “[T]he doctrine of ripeness concerns the timing of a court’s intervention in litigation.” *Phila. Entm’t & Dev. Parnters, L.P. v. City of Philadelphia*, 937 A.2d 385, 392 (Pa. 2007).

5. “The basic rationale underlying the ripeness doctrine is ‘to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.’” *Id.* (quoting *Abbott Labs v. Gardner*, 387 U.S. 148 (1967)).

6. In its Petition, TotalEnergies seeks a preliminary ruling that PPL Electric should be restrained from making the 25% deposit non-refundable. (Petition, p. 10.)

7. Notably, TotalEnergies does not seek to enjoin the collection of the 25% deposit generally, as it only requests that such deposit be declared refundable as opposed to non-refundable.

8. The only way the deposit’s refundability becomes an issue is if TotalEnergies fails to move forward with the project and demands a refund.

9. Here, TotalEnergies has not paid the deposit, nor has it sought a refund of any portion of the amount due to PPL Electric.

10. Further, by all indications, and as represented in TotalEnergies’ Petition and Formal Complaint, TotalEnergies fully intends to move forward with the project as well.

11. If that were to change before the Formal Complaint is adjudicated, then TotalEnergies can move for interim emergency relief at that time and request that it be refunded the deposit pending the Commission’s final disposition of the Formal Complaint.

12. Until that situation arises, if ever, TotalEnergies is not harmed by the non-refundability of the deposit.

13. Thus, TotalEnergies' request for interim emergency relief is not ripe and should be denied on that ground alone.

B. TOTALENERGIES FAILS TO MEET THE STANDARD FOR INTERIM EMERGENCY RELIEF

14. The Petition also should be denied because TotalEnergies' request fails to meet the standard for interim emergency relief.

15. To establish the need for interim emergency relief, a party must prove all of the following: (1) the right to relief is clear; (2) the need for relief is immediate; (3) the injury would be irreparable if relief is not granted; and (4) the relief requested is not injurious to the public interest. 52 Pa. Code § 3.6(b)(1)-(4).

16. TotalEnergies' Petition fails to prove all the required points under this standard.

1. TotalEnergies Fails to Prove that the Need for Relief Is Immediate

17. TotalEnergies fails to establish that its need for relief is immediate because the "risks" alleged by TotalEnergies are speculative.

18. Specifically, the Verified Statement of TotalEnergies Distributed Generation USA, LLC ("TotalEnergies Verified Statement") Frederic A Potts, the President and Chief Executive Officer of TotalEnergies cited the following "risks" that could jeopardize the project and result in the collapse of the project before completion: change in law, inability to permit a project, and "the cost of obtaining and complying with environmental and other required approvals from local, state, and Federal agencies." (TotalEnergies Verified Statement ¶ 5.)

19. Notably, TotalEnergies Verified Statement frames these concerns as risks, not as harms. These concerns are not things that will happen, they are thing that have not happened and may never come to pass.

20. The Commonwealth Court has held, “adverse economic effects are speculative” and do not warrant interim emergency relief. *Peoples Natural Gas Co. v. Pa. PUC*, 555 A.2d 288, 291 (Pa. Cmwlth. 1989).

21. Accordingly, these alleged harms are speculative and not immediate and, therefore, do not warrant interim emergency relief.

22. Also, TotalEnergies’ request is not immediate because it is free to seek interim emergency relief later when it no longer wants to pursue the project.

23. For example, if TotalEnergies ultimately is unable to secure the permits necessary for the project and needs to withdraw its interconnection application, TotalEnergies could file its petition for interim emergency relief then and ask for the unspent portion of the 25% deposit back (assuming the Formal Complaint proceeding has not fully and finally concluded in PPL Electric’s favor).

24. On the other hand, if the Commission were to find that PPL Electric must refund any portion of the deposit to TotalEnergies, either through adjudicating a subsequent petition for interim emergency relief or through adjudicating TotalEnergies’ Formal Complaint, the Company would be required to comply with that Order, provided that no reconsideration, stay, or appeal is granted.

2. TotalEnergies Fails to Establish that It Would Suffer Irreparable Harm Without the Relief Requests

25. No irreparable harm is prevented by granting TotalEnergies’ Petition.

26. As observed in the prior section, the financial harms alleged by TotalEnergies are speculative “risks.”

27. Such speculative and financial harms do not constitute irreparable harm.

28. In addition, if TotalEnergies prevails on its Formal Complaint and if its project does not move forward, then the Commission can order a refund.

29. If TotalEnergies' projects do move forward, then the refundability issue becomes moot because the deposit will go toward the system upgrade costs that are needed to interconnect the project with PPL Electric's distribution system.

30. For these reasons, TotalEnergies' irreparable harm argument completely hinges on the alleged unlawfulness of PPL Electric's requirement for a 25% non-refundable deposit.

31. However, the Commission's regulations authorize PPL Electric to charge interconnection applicants for the costs to study, engineer, design, and construct the distribution system upgrades necessary to facilitate the alternative energy systems' interconnection. *See, e.g.*, 52 Pa. Code §§ 75.39(d)(2), (e)(1), (e)(4).

32. Indeed, under the Level 3 interconnection review procedures, which apply to all of TotalEnergies' projects currently in the queue, the applicant must agree "to pay for the interconnection facilities and distribution upgrades identified in the interconnection facilities study." *Id.* § 75.39(e)(4).

33. The 25% non-refundable deposit is designed to cover the costs PPL Electric incurs to design, manage, and order long lead time items for the distribution system upgrades, while providing a milestone payment to ensure that the interconnection applicant lives up to its agreement to pay for the interconnection facilities and distribution upgrades identified by the Company.

34. Additionally, TotalEnergies fails to distinguish the "interconnection fees" from the payment for the costs of "interconnection facilities and distribution upgrades." *Compare* 52 Pa. Code § 75.33 (interconnection fees and forms), *with* 52 Pa. Code § 75.39(e)(4).

35. Section 75.33 does not require the Commission to determine the appropriate distribution system upgrade costs for Levels 1, 2, 3, and 4 interconnection reviews, only the “interconnection fees.” *Id.* § 75.33.

36. Here, PPL Electric’s charges the interconnection application fees set forth in the Commission’s policy statement, which the Commission has “deemed appropriate for use by electric distribution companies when processing interconnection applications.” *Id.* § 69.2104.

37. Accordingly, TotalEnergies’ reference to the Commission’s regulation governing “interconnection fees” and its arguments based thereon should be disregarded.

3. TotalEnergies Fails to Demonstrate that the Public Interest Would Not Be Harmed if its Request Were Granted

38. The Petition should be denied because the public interest would be harmed by granting TotalEnergies’ request for interim emergency relief.

39. The Commission should want “shovel ready” projects in the Company’s interconnection application queue. By requiring a 25% non-refundable deposit, PPL Electric helps encourage the submission and processing of the projects that are ready to move forward.

40. Without this deposit requirement, interconnection applicants that still need to secure permits and zoning approvals, such as TotalEnergies, are encouraged to file their interconnection applications as soon as possible to establish their position in the queue.

41. By filing their interconnection applications before finalizing and securing these crucial approvals, those interconnection applicants hold up projects that have their permits and approvals and are ready to move forward.

42. In addition, PPL Electric requires the 25% non-refundable deposit because after the Company receives such deposit, the Company begins engineering, designing, managing, and

ordering long lead time items for the distribution system upgrades required to interconnect the alternative energy system with its distribution system in a safe and reliable manner.

43. Finally, the interconnection studies for other projects in the queue depend on whether TotalEnergies moves forward with its project and pays for the distribution system upgrades.

44. In fact, the Company's studies assume that the projects earlier in position in the queue will move forward.

45. Consequently, if TotalEnergies backs out, the distribution system upgrades needed to interconnect other projects in the queue, and the associated costs those interconnection applicants must pay, can be affected.

46. Additionally, if TotalEnergies withdraws an interconnection application it causes the Company to restudy every other application in the queue, which can cause those other applicants unexpected delays in getting their project interconnected.

47. As such, the Company's deposit requirement helps insulate against that risk for other interconnection applicants, and granting TotalEnergies' request would unduly harm the Company, its ratepayers, and other interconnection applicants in the queue.

48. Lastly, many of the risks identified by TotalEnergies could be mitigated by TotalEnergies. The Petition references the approximately \$5.9 million of deposits that are owed in the near future.

49. What is not included is that TotalEnergies submitted 30 interconnection applications, for 82.3 MW of generation in a two-week time period in February 2024.

50. If TotalEnergies is worried about the amount of capital it is putting at risk, it could have spread its applications out.

51. Also, TotalEnergies references the uncertainties of obtaining zoning and environmental permits associated with the projects.

52. However, nothing is preventing TotalEnergies from obtaining applicable land development approvals prior to applying to interconnect with PPL Electric to minimize project uncertainty.

53. TotalEnergies should not accuse PPL Electric of creating unreasonable risk when it has not taken steps available to it to minimize the very risk TotalEnergies is concerned about.

54. Based on the foregoing, the Commission should deny TotalEnergies' Petition.

II. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission deny the Petition of TotalEnergies Distributed Generation USA, LLC for an Interim Emergency Order.

Respectfully submitted,



Kimberly A. Klock (ID # 89716)
Michael J. Shafer (ID # 205681)
PPL Services Corporation
645 Hamilton Street, Suite 700
Allentown, PA 18101
Phone: 610-774-2599
Fax: 610-774-4102
E-mail: kklock@pplweb.com
mjshafer@pplweb.com

Devin T. Ryan (ID # 316602)
Alice Wade (ID # 335228)
Post & Schell, P.C.
One Oxford Centre
301 Grant Street, Suite 3010
Pittsburgh, PA 15219
Phone: 717-612-6052
Fax: 717-731-1985
E-mail: dryan@postschell.com
alice.wade@postschell.com

Megan E. Rulli (ID # 331981)
Post & Schell, P.C.
17 North Second St., 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-612-6012
Fax: 717-731-1985
E-mail: mrulli@postschell.com

Date: October 7, 2024

Attorneys for PPL Electric Utilities Corporation