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October 9, 2024

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

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

TotalEnergies Distributed Generation USA, LLC v. PPL Electric Utilities, Inc.; Docket No. C-2024-3051475

MEMORANDUM OF LAW OF TOTALENERGIES DISTRIBUTED GENERATION USA, LLC

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Memorandum of Law of TotalEnergies Distributed Generation USA, LLC ("TotalEnergies") in Support of Petition for Interim Emergency Relief in the above-referenced matter. A copy of this Memorandum 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,

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

TSS/jld
Enclosure
cc: Administrative Law Judge Steven K. Haas (via electronic mail – sthaas@pa.gov)
Administrative Law Judge F. Joseph Brady (via electronic mail – fbrady@pa.gov)
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

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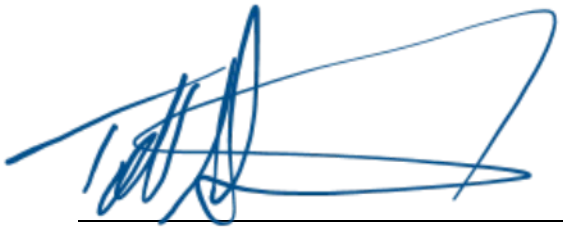


Todd S. Stewart

Dated: October 9, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of TotalEnergies Distributed Generation USA, LLC for Interim Emergency Order	:	Docket No. P-2024-3051440
TotalEnergies Distributed Generation USA, LLC, Complainant, v. PPL Electric Utilities, Inc., Respondent.	:	Docket No. C-2024-3051475

MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR INTERIM EMERGENCY RELIEF
OF TOTALENERGIES DISTRIBUTED GENERATION USA

NOW COMES, TotalEnergies Distributed Generation USA ("TotalEnergies"), by and through its attorneys, HMS Legal LLP, and hereby submits this Memorandum of Law in the above-captioned matter in support of its Petition for Interim Emergency Relief in the Complaint case filed simultaneously with its Petition. The Petition seeks to enjoin PPL Electric Utilities, Inc. ("PPL") from imposing a non-refundable deposit requirement for customer-generator developers of net[1] metered renewable or alternative energy projects seeking to interconnect with PPL's distribution system in an amount that does not correspond to PPL's actual expenditure.

[1] The Commission's Regulations governing the interconnection process are found at 52 Pa. Code §§ 75.13-75.51. None of these regulations allows PPL to demand a non-refundable deposit. While it is true that EDCs are permitted to require developers to pay actual cost of interconnection, the regulations nowhere authorize EDCs to charge more than the cost or to pose additional risk/penalties in the event a project cannot be completed.

The deposits are intended to secure payment by the customer-generator to PPL for complex engineering, interconnection equipment and other elements involved in the interconnection process and are based on 25% of the total costs. However, the demand is for a larger deposit than is necessary to secure the costs PPL will actually incur at that point. If a project fails at any point during the development process, PPL retains the deposit, first using it to offset costs it has incurred, and then simply keeping any remaining funds for its own profit. The testimony is clear that projects regularly fail for any number of reasons outside the control of the developer, including unexpected excessive costs of interconnection, denial of permits, etc. Contrary to PPL's speculation, projects will not be built if non-refundable deposits are required, and irreparable harm will result. PPL's specious claim that TotalEnergies should just pay the deposit now and sue them later points out the fallacy of PPL's position that the request for emergency relief is not ripe. The claim is ripe because as Mr. Elias clearly stated, at least the first of 20 plus projects at issue will not go further absent a refundable deposit.

There are four factors that the Commission must consider when granting emergency relief. Of the four, the one that is central is that the harm must be irreparable-in this case it obviously is, because PPL's conduct is illegal the harm is *per se* irreparable[2]. The change in process, the demand for a non-refundable deposit that PPL will simply keep if a project is not progressed – are all in violation of the Public Utility Code and/or Commission Regulations.[3] There is nothing in the Alternative Energy Portfolio Standards Act, or the Commission's interconnection regulations that requires projects to be "shovel ready" and for PPL to rely on it as a basis for its illegal conduct is misplaced. PPL has not obtained, or even sought approval of its non-refundable deposit nor its Shovel Ready demand and they must therefore be rejected as

[2] *Israel v. Pa. P.U.C.,* 356 Pa. 400, 52 A.2d 317 (1947).
[3] 66 Pa. C.S. § 1501 and § 1302.

illegal. The harm is irreparable because the nature of the cause of the harm makes it improbable to recover from the causer. As Mr. Elias testified, projects fail because permits are denied, laws change, and cost estimates turn out to be wrong. None of those factors allow a developer to sue the entity that caused the issues, i.e., there is no recourse. The General Assembly cannot be sued if mid-way through the approval process they alter net metering in such a way that TotalEnergies could not complete a project, and yet TotalEnergies would be out the non-refundable deposit if they did so. The same is true for a local zoning board, or if PPL's actual costs differ substantially from their initial estimate. All these cause the loss of projects yet none allows for recourse, making the harm irreparable.

The harm will be immediate if no relief is granted. Again, as Mr. Elias stated, if the deposits remain non-refundable, some of its projects for which deposits are soon due will not progress and will be lost, including queue position. The same with change in law or other externalities that result in of proposed projects not being built. PPL claims that projects should only apply for interconnection into their system when they were "shovel ready", with all permits in hand. This approach demonstrates PPL's "the world is as we see it" approach and ignores the reality that it is often the interconnection costs themselves that kill projects, when the actual cost of interconnection exceeds those estimated at the time the deposit is required. It makes no sense to invest in all the land use and other approvals until the costs of interconnection are known, since they are in most cases the largest expense and the most common reason projects fail. PPL's process appears to be intended to place the maximum amount of risk on developers. Here, TotalEnergies is being asked to pay a substantial non-refundable sum – 25% of the total estimated costs – for projects that have a significant probability of not being built. And those

deposits are due now. The money will be gone now, with no recourse. Layered on top of the illegal nature of PPL's demand, it is clear that any harm will be irreparable.

The right to relief is clear. PPL has unilaterally imposed a non-refundable deposit requirement for solar projects to retain their position in the interconnection queue. Retaining that position is critical because generally the further down a project is positioned, the higher the costs of and timeline for interconnection become, as Mr. Elias testified. PPL's demand makes a 25% of total cost deposit payment mandatory and irrevocable-turning it into a rate.[4] The law is clear that before a utility can charge a rate it must be just and reasonable, approved by the Commission and contained in a tariff.[5] PPL's non-refundable deposit fails on all three counts. PPL's deposit also fails to comply with the law, because it has no authority to recover anything but the actual costs of a project from a developer.[6] Nowhere does the Alternative Portfolio Standards Act or the Commission's interconnection regulations allow an EDC to collect anything other than actual costs, yet PPL brazenly demands a deposit, when if retained, will almost certainly allow PPL to keep excess funds for which it completed no corresponding work. That is not authorized and is illegal.

The relief requested will not be injurious to the public. Making deposits refundable, as they have been to this point, will harm no-one. As Mr. Elias testified, everywhere else that employs a similar interconnection deposit requirement, including the other EDCs in PA, allows the deposits be refunded if not used. If PPL feels that it must be able to manage the queue, it has other means available to it, but all must be approved by the Commission to ensure that it does

[4] See 66 Pa C.S. § 102 ("Rate") ("Every individual, or joint fare, toll, charge, rental, or other compensation whatsoever of any public utility, or contract carrier by motor vehicle, made, demanded, or received for any service within this part, offered, rendered, or furnished by such public utility, or contract carrier by motor vehicle, whether in currency, legal tender, or evidence thereof, in kind, in services or in any other medium or manner whatsoever, and whether received directly or indirectly, and any rules, regulations, practices, classifications or contracts affecting any such compensation, charge, fare, toll, or rental.").

[5] 66 Pa.C.S. § 1301, 1302.

[6] 52 Pa. Code § 75.1-75.39.

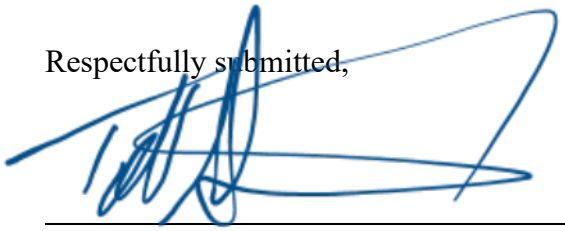
not violate the regulations or harm others. PPL has no approval for its shovel ready approach to vetting projects and could not even put a witness on the stand to say they did. To address the concern for projects with a lower queue position being disadvantaged, Mr. Elias testified that there are alternatives to non-refundable deposits to ensure that projects keep moving without unreasonable delay. There simply is no reason for PPLs draconian solution to a problem that does not exist, and removing the cause, the non-refundability of deposits, harms no one. PPL is still secured for its actual costs and there is no harm to any other party.

Alternative energy projects make two applications for a project, one for the interconnection, and one for Commission approval. Each is submitted to the utility. The regulations require that the net-metering application (the one sent to the Commission) be processed within 30 days of receipt. For the 18 projects listed on TotalEnergies Exhibit 3, PPL has submitted none to the Commission for approval under the net metering regulations. In other words, PPL is blatantly violating the law with its new process in more than one act. It has neither sought nor received any waiver for this illegal change in process. This lack of action places projects at risk if the law were to change, because there would be little to demonstrate that a project would have a right to proceed under any "grandfathering" that a new law might include, as Mr. Elias discussed. This intentional violation demonstrates PPL's motivation for the non-refundable deposit – to place risk on projects in hopes that they will not be completed. PPL seeks deposits that far exceed the costs for which they were intended to secure payment and will certainly provide PPL with unjust windfall profits at the expense of developers whose projects cannot be completed. PPL has claimed that it is important that projects have all approvals before applying for interconnection yet sought no approval for its change in process that has the additional harms noted above. The largest killer of projects is the interconnection costs

exceeding reasonable expectations, as Mr. Elias noted, and yet PPL would force suppliers to place a non-refundable deposit before it knows those costs. PPL has had experience with costs of such projects exceeding expectations and resulting in project cancellation, so it clearly understands the risk it is placing on developers.[7]

TotalEnergies seeks two forms of relief in this matter: 1) that the Commission prohibit PPL from making deposits non-refundable and to eliminate the consequences of it having done so, including the loss of queue positions for TotalEnergies projects that have or will refuse to pay a non-refundable deposit, i.e., to mandate that TotalEnergies retain its queue positions, and to give TotalEnergies a reasonable amount of time, at least 30 days, following a final decision to make any required deposits; and 2) to require PPL to adhere to the Commission approved process of submitting net metering applications to the Commission for approval on a timely basis and employing the process for interconnection as required in the Commission's regulations, including the elimination of the "shovel ready" requirements until such time as the Commission approves such process.

Respectfully submitted,



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DATED: October 9, 2024

[7] https://www.power-eng.com/news/ppl-cancels-electricity-project-at-freeport-long-island/#gref.