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File #: 208626

October 9, 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**

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Dear Secretary Chiavetta:

Attached for filing on behalf of PPL Electric Utilities Corporation is the Memorandum of Law in Support of its Answer 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**

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Dated: October 9, 2024



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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 :

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**MEMORANDUM OF LAW IN SUPPORT OF  
PPL ELECTRIC UTILITIES CORPORATION’S ANSWER TO THE PETITION OF  
TOTALENERGIES DISTRIBUTED GENERATION USA, LLC FOR  
INTERIM EMERGENCY ORDER**

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

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby files this Memorandum of Law in Support of its Answer (“Answer”) to the Petition of TotalEnergies Distributed Generation USA, LLC (“TotalEnergies”) for an Interim Emergency Order (“Petition”) pursuant to the instructions of presiding Administrative Law Judges Steven K. Haas and F. Joseph Brady (“ALJs”). As explained herein, the Petition should be denied.

**I. ARGUMENT**

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

As a fundamental matter, the Petition should be denied because TotalEnergies’ request for interim emergency relief is not ripe. “[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). “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)).

In this case, TotalEnergies seeks a preliminary ruling that PPL Electric should be restrained from making the 25% deposit non-refundable. (Petition, p. 10.) Crucially, TotalEnergies does not

seek to enjoin the collection of the 25% deposit generally. TotalEnergies 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. To date, TotalEnergies has not paid the deposit, nor has it sought a refund of any portion of the amount due to PPL Electric. If that were to change before TotalEnergies' 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. Until that situation arises, if ever, TotalEnergies is not harmed by the non-refundability of the deposit. Thus, TotalEnergies' request for interim emergency relief is not ripe and should be denied on that ground alone.

**B. TOTALENERGIES FAILED TO PROVE THAT THE NEED FOR INTERIM EMERGENCY RELIEF IS IMMEDIATE**

TotalEnergies failed to establish that its need for relief is immediate. All of the "risks" alleged by TotalEnergies in its Petition and by its witness at the hearing are financial. 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). Accordingly, these alleged harms are speculative and not immediate and, therefore, do not warrant interim emergency relief.

Further, during cross examination, TotalEnergies witness Elias reiterated what he saw as risks that could cause a project to collapse, specifically, the potential inability to secure zoning approvals, environmental approvals, and land rights for the projects. However, Mr. Elias did not provide details on any steps that TotalEnergies has taken to secure these rights and approvals, nor did he identify any issues thus far in securing those rights and approvals. These failings with Mr. Elias's testimony are consistent with the Verified Statement submitted with TotalEnergies'

Petition, wherein Frederic A. Potts, the President and Chief Executive Officer of TotalEnergies, could only identify “risks” that could jeopardize the projects. (Verified statement ¶ 5.) These concerns are not things that will happen. They are things that have not happened and may never come to pass.<sup>1</sup> Thus, these alleged financial harms are not immediate or even certain to occur.

**C. TOTALENERGIES FAILED TO ESTABLISH THAT IT WOULD SUFFER IRREPARABLE HARM WITHOUT THE RELIEF IT REQUESTS**

TotalEnergies failed to establish that that it would suffer irreparable harm without the relief requested. As explained previously, the financial harms alleged by TotalEnergies are speculative and cannot constitute an irreparable harm. Even if TotalEnergies decides not to pay the deposit while it is non-refundable, such “harm” is self-created and illusory, given that TotalEnergies can still recoup the unspent portion of the deposits if it ultimately prevails on its Formal Complaint. Indeed, TotalEnergies erroneously claimed at the emergency hearing that it has no recourse if forced to pay the non-refundable deposit. Not only has TotalEnergies filed a Formal Complaint challenging the non-refundability of the deposits, where the Commission could direct PPL Electric to refund the unspent amounts remaining of any deposits paid by TotalEnergies, but TotalEnergies could later seek interim emergency relief if and when it decides to withdraw the interconnection application for its project. Simply put, the alleged harm is not “irreparable” because there are legal processes in place through which TotalEnergies could obtain the refund in dispute.

As for the alleged unlawfulness of the deposit, TotalEnergies overlooks how 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

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<sup>1</sup> Moreover, Mr. Elias’s testimony about the alleged failure rate for TotalEnergies’ projects is suspect. Upon cross-examination, Mr. Elias admitted that his claim that “20 to 50%” of the projects fail was based on a rough estimate across all jurisdictions in which TotalEnergies operates, not any actual calculation specific to Pennsylvania or PPL Electric’s service territory.

the alternative energy systems' interconnection. See, e.g., 52 Pa. Code §§ 75.39(d)(2), (e)(1), (e)(4). Particularly, 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). The 25% deposit is a portion of those costs that the interconnection applicant must pay under the Commission's regulations, and PPL Electric is prepared to defend its interconnection process and deposit requirement on both the facts and law in the Formal Complaint proceeding.

**D. TOTALENERGIES FAILED TO DEMONSTRATE THAT THE PUBLIC INTEREST WOULD NOT BE HARMED IF ITS REQUEST WERE GRANTED**

TotalEnergies failed to prove that the public interest would not be harmed if its request were granted. In its Answer to the Emergency Petition, PPL Electric argued that the Commission should want "shovel ready" projects in the Company's interconnection application queue. (Answer ¶ 39.) 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. (Answer ¶ 40.) This disrupts the interconnection queue and adversely affects other interconnection applicants, by requiring their projects to be restudied and potentially requiring them to pay more for distribution system upgrades after an interconnection application ahead of them is withdrawn. (Answer ¶¶ 43-47.)

During the hearing, TotalEnergies' testimony validated the Company's concerns. Specifically, Mr. Elias testified about all the rights and approvals that TotalEnergies still must secure for its projects in the interconnection queue and even claimed that 20 to 50% of TotalEnergies' projects fail. Therefore, even assuming *arguendo* that the 20 to 50% figure is

correct, TotalEnergies' own witness's testimony showed how approving this Petition would harm the public interest—many of TotalEnergies' projects will likely fail and adversely affect other interconnection applicants behind them in the queue.

**II. CONCLUSION**

WHEREFORE, for the reasons set forth in its Answer, closing argument during the October 8, 2024 emergency hearing, and in this Memorandum of Law, PPL Electric Utilities Corporation respectfully requests that the Petition of TotalEnergies Distributed Generation USA, LLC for an Interim Emergency Order be denied. Further, the additional conditions to the request for interim emergency relief that were raised for the first time on page 6 of TotalEnergies' Memorandum of Law and were not set forth in the Petition should be disregarded entirely.

Respectfully submitted,



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