

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held November 7, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman  
Kimberly Barrow, Vice Chair  
John F. Coleman, Jr.  
Kathryn L. Zerfuss  
Ralph V. Yanora

Petition of TotalEnergies Distributed  
Generation USA, LLC for Interim  
Emergency Order

P-2024-3051440

Petition for Interim Emergency Order Under  
52 Pa. Code § 3.6

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission or PUC) for consideration and disposition is the Material Question raised by the October 15, 2024 “Order Granting Interim Emergency Relief and Certifying Material Question” (*Interim Emergency Order*) issued by Administrative Law Judges (ALJs) Stephen K. Haas and F. Joseph Brady in the above-captioned matter.

The ALJ’s *Interim Emergency Order* granted the emergency relief requested by the Petition of TotalEnergies Distributed Generation USA, LLC

(TotalEnergies) for Interim Emergency relief filed on September 30, 2024, pursuant to 52 Pa. Code § 3.6 (§ 3.6 Petition), *i.e.*, barring PPL Electric Utilities, Inc., (PPL) from making its customer generator net metering deposit payment non-refundable, pending final Commission order on the corresponding Formal Complaint.

## **I. Material Question**

The Material Question presented for our review is as follows:

Did ALJs Haas and Brady properly issue the *Interim Emergency Order* granting the emergency relief requested by TotalEnergies?

For the reasons discussed below, we decline to answer the question as we find that the matter is now moot.

## **II. Background**

### **A. The Parties**

The Parties to the proceeding are described as follows:

TotalEnergies is a 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. PPL is an electric distribution company (EDC) under the jurisdiction of the Commission.

*Interim Emergency Order* at 3.

## **B. The Section 3.6 Petition**

The *Interim Emergency Order* described the basis for TotalEnergies' § 3.6 Petition as follows:

This [§3.6] Petition arises from PPL's implementation of a non-refundable deposit requirement for customer-generator developers of net metered renewable or alternative energy projects, *i.e.* TotalEnergies, seeking to interconnect with PPL's distribution system. 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. The Petition seeks to enjoin PPL from imposing this nonrefundable deposit requirement pending final disposition of the corresponding Complaint at C-2024-3051475.

*Interim Emergency Order* at 3.

## **III. Procedural History**

On September 30, 2024, TotalEnergies Distributed Generation USA, LLC (TotalEnergies) filed both a Petition for Interim Emergency Relief pursuant to Section 3.6 of the Commission's regulations and a formal complaint pertaining to the same matter regarding a PPL Electric Utilities, Inc. (PPL) customer-generator interconnection approval process. TotalEnergies is a developer of renewable energy projects and has made several customer generator applications for net metered solar generating facilities in the PPL service area. TotalEnergies objects to PPL adopting a deposit requirement for customer-generator developers of net metered renewable energy for alternative energy projects. The deposit would require the customer-generator to pay PPL for complex engineering, interconnection equipment and other elements. The deposit is 25% of the total costs and non-refundable.

In the Complaint, TotalEnergies challenges PPL’s adoption of a customer-generator interconnection approval process, particularly the non-refundable deposit, as unreasonable and in violation of 66 Pa. C.S. §§ 1301 and 1501, and Commission regulations. As relief, TotalEnergies asks the Commission to “permanently bar PPL from imposing substantial non-refundable deposits on customer generators.” § 3.6 Petition at 10 (citing Complaint at Docket No. C-2024-3051475).

In the instant § 3.6 Petition, TotalEnergies requests that the Commission bar PPL from requiring a non-refundable deposit, until the legality of the requirement for a non-refundable deposit may be resolved by a final disposition of the Complaint at Docket No. C-2024-3051475.

On October 2, 2024, a Telephonic Emergency Hearing Notice was issued scheduling an initial telephonic emergency hearing for Tuesday, October 8, 2024, at 1:00 p.m., before ALJs Haas and Brady.

The emergency evidentiary hearing convened on October 8, 2024, as scheduled.

TotalEnergies and PPL were represented by counsel. TotalEnergies presented the testimony of Mr. Christopher Elias and marked three exhibits for identification that were admitted into the record:

TotalEnergies Exh. 1 – Project Impact Review TotalEnergies  
TotalEnergies Exh. 2 (Confidential) – Invoice  
TotalEnergies Exh. 3 (Confidential) – Project List

Tr. at 43. At the hearing, PPL conducted cross-examination but did not present testimony.  
*Id.*

The Commission docketed receipt of the 56-page expedited transcript on October 9, 2024.

Also on October 9, 2024, TotalEnergies and PPL filed Memorandums of Law.

On October 15, 2024, following a hearing, the Office of Administrative Law Judge issued an Order granting the petition for interim emergency relief filed by TotalEnergies and certifying a material question to the Commission, as required by Commission regulations.<sup>1</sup>

On October 22, 2024, however, TotalEnergies and PPL filed a joint letter in which the Parties asserted their agreement that PPL would not require non-refundable deposits from TotalEnergies while the formal complaint, at Complaint Docket No. C-2024-3051457, was pending. The letter specifically stated: “To save the time and effort involved in briefing the issue and the Commission's time and effort in reviewing this matter, PPL Electric and TotalEnergies have reached an agreement that will eliminate the need for Commission review of the Interim Emergency Order.”<sup>2</sup> The letter further stated that “such deposits will remain refundable unless the Commission in its ruling on the complaint case declares that such deposits shall be non-refundable.”<sup>3</sup> The Parties requested that the Commission take whatever action may be required to effectuate the agreement.<sup>4</sup> As a result, neither TotalEnergies nor PPL filed a brief regarding the material question certified by the ALJs on October 15, 2024.

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<sup>1</sup> 52 Pa. Code § 3.10.

<sup>2</sup> *Joint Letter Addressing Ratification* at 1 (October 22, 2024).

<sup>3</sup> *Id.* at 1-2.

<sup>4</sup> *Id.* at 2.

## IV. Discussion

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

### A. Interim Emergency Relief – The Legal Standard

The purpose of an interim emergency order is to grant or deny injunctive relief during the pendency of a proceeding. 52 Pa. Code § 3.1. The standards that govern the issuance of interim emergency orders are set forth at 52 Pa. Code § 3.6. Section 3.6 requires that a petition for interim emergency relief be supported by a verified statement of facts that establishes the existence of the need for emergency relief, including facts to support the following:

- (1) The petitioner's right to relief is clear.
- (2) The need for relief is immediate.
- (3) The injury would be irreparable if relief is not granted.
- (4) The relief requested is not injurious to the public interest.

52 Pa. Code § 3.6(b).

The Commission may grant interim emergency relief only when *all* of the foregoing elements exist. *Glade Park East Home Owners Association v. Pa. PUC*, 628 A.2d 468 (Pa. Cmwlth. 1993). Further, as to the first element, it is not necessary to determine the merits of the controversy in order to find that a petitioner's right to relief is

clear; rather, the only required determination is that the petition raises substantial legal questions. *T.W. Phillips Gas and Oil Company v. Peoples Natural Gas Company*, 492 A.2d 776 (Pa. Cmwlth. 1985).

“Emergency” is defined in our Regulations as “[a] situation which presents a clear and present danger to life or property, or which is uncontested and requires action prior to the next scheduled public meeting.” 52 Pa. Code § 3.1. *See also, Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light & Power Company*, Docket No. P-00062205 (Order entered April 20, 2006) (while Pike County’s retail rates rose to an unexpectedly high level, they did not constitute a clear and present danger to life or property within the meaning of the Code); *Petition of National Fuel Gas for Emergency Order Granting a Temporary Waiver of Certain Tariff Rules Related to Transportation Service*, Docket Nos. P-00961022 and P-00961021 (Order entered March 19, 1996) (the threat of depletion of gas stores in unusually cold conditions constituted a clear and present danger to life or property justifying the waiver of charges for over deliveries required by tariff).

The party seeking relief bears the burden of proving that the facts and circumstances meet all four of the requirements in the Commission’s Regulation. 66 Pa.C.S. § 332; 52 Pa. Code § 3.6(b). The burden of proof must be carried by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Petitioner’s evidence must be more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6

(Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

52 Pa. Code § 3.10(a) provides that an order granting or denying interim emergency relief is immediately effective upon issuance by the ALJ and that no stay of the order will be permitted pending Commission review of the order. 52 Pa. Code § 3.10(b) requires the ALJ to certify the question of the grant or denial of relief to the Commission as a material question in accordance with 52 Pa. Code § 5.305.

52 Pa. Code § 5.305 sets forth the procedure to be followed when an ALJ certifies a material question to the Commission for interlocutory review. Within thirty days<sup>5</sup> of receipt of the certified question, the Commission is required to do one of the following:

- (1) Continue, revoke or grant a stay of proceedings.
- (2) Determine that the certification was improper and return the matter to the presiding officer for resolution.
- (3) Answer the certified question.

52 Pa. Code § 5.305(e).

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<sup>5</sup> 52 Pa. Code § 5.305(f) provides that, if the Commission fails to act upon a certified question within thirty days of its receipt, the Commission's inaction will be deemed an affirmation of the decision of the presiding officer.

**B. The ALJs' Interim Emergency Order**

In the ALJs' *Interim Emergency Order*, the ALJs concluded, based on the evidence and arguments presented, that:

TotalEnergies has proven by a preponderance of the evidence that (1) its right to relief is clear, (2) the need for relief is immediate, (3) the injury would be irreparable if the requested relief is not granted, and (4) the requested relief is not injurious to the public interest. [*Glade Park*] Accordingly, we will grant the Petition and bar PPL from making its deposit payment non-refundable pending a final Commission order on the corresponding Formal Complaint.

Pursuant to 52 Pa. Code § 3.10(b), the question of granting or denying relief by an interim emergency order shall be certified to the Commission as a material question to be processed in accordance with 52 Pa. Code § 5.305. The Commission will conduct further proceedings on the issues raised by the other pleadings after the Commission has ruled on this order granting interim emergency relief pursuant to 52 Pa. Code § 5.305.

*Interim Emergency Order* at 15.

**C. Joint Letter of TotalEnergies and PPL**

In the *Joint Letter*, TotalEnergies and PPL submitted that:

To save the time and effort involved in briefing the issue and the Commission's time and effort in reviewing this matter, PPL Electric and TotalEnergies have reached an agreement that will eliminate the need for Commission review of the Interim Emergency Order. PPL Electric has agreed that all deposit payments made by TotalEnergies or its subsidiaries, in furtherance of interconnection applications on the PPL Electric system, will be expressly refundable pending the outcome of the underlying Complaint case and that such

deposits will remain refundable unless the Commission in its ruling on the Complaint case declares that such deposits shall be nonrefundable.

Accordingly, TotalEnergies and PPL Electric will not be submitting briefs, considering that the issue of the refundable status of TotalEnergies's deposits has been resolved pending the outcome of the Complaint [at Docket No. C-2024-3051475], and ask that the Commission take whatever action may be required to effectuate this agreement.

*Joint Letter* at 1-2.

#### **D. Answer to the Material Question**

Based on our review of the ALJs' analysis and the Joint Letter of TotalEnergies and PPL demonstrating no opposition to the ALJs' *Interim Emergency Order*, we conclude that based on the assertions in the October 22, 2024 letter, the petition for emergency relief and ensuing material question should be deemed moot. Although section 5.305 of the Commission's regulations regarding interlocutory review of material questions does not specifically allow the Commission to deem a material question moot, under the circumstances present in the current matter, we exercise our discretion to liberally construe this provision of our regulations since no substantive rights of the Parties are affected.<sup>6</sup> That is, since neither Party wishes that we answer the material question, we will refrain from doing so. The Parties' agreement that such deposits will remain refundable unless the Commission rules otherwise in response to the complaint is reasonable and will be adopted.

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<sup>6</sup> 52 Pa. Code § 1.2(a) ("this subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.").

Finally, we note that any questions regarding the legality of deposit requirements in furtherance of interconnection applications on the PPL Electric system are referred to the disposition of the Complaint at Docket No. C-2024-3051475.

## V. Conclusion

The ALJ concluded that the Petitioners demonstrated, by a preponderance of the evidence, that it is entitled to interim emergency relief, pursuant to 52 Pa. Code § 3.6(b). Accordingly, the ALJs granted the request for interim emergency relief. *Interim Emergency Order* at 16. The question of the correctness of that ruling was then certified to us as a material question.

For the above-outlined reasons, we decline to answer the question as we find that the matter is now moot; **THEREFORE,**

### **IT IS ORDERED:**

1. That the material question certified by the Office of Administrative Law Judge on October 15, 2024 will be deemed moot to secure the just, speedy and inexpensive determination of the matter.
2. That any questions regarding the legality of deposit requirements in furtherance of interconnection applications on the PPL Electric system are referred to the matter at docket number C-2024-3051475.

3. That the Petition of TotalEnergies Distributed Generation USA, LLC for Interim Emergency Order is marked closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with a large initial "R" and "C".

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: November 7, 2024

ORDER ENTERED: November 14, 2024