
Megan E. Rulli

mrulli@postschell.com
717-612-6012 Direct
717-731-1985 Direct Fax
File #: 205510

May 6, 2025

VIA ELECTRONIC FILING

Matthew Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box
Harrisburg, PA 17105-3265

**Re: Petition of PPL Electric Utilities Corporation for Approval of its Second
Distribution Energy Resources Management Plan
Docket No. P-2024-3049223**

Dear Secretary Homsher:

Attached for filing is the Answer of PPL Electric Utilities Corporation (“PPL” or the “Company”) to the Joint Solar Parties’ Motion for Leave to File Surreply in the above-referenced proceeding.

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

Respectfully submitted,


Megan E. Rulli

MER/dmc
Attachment

cc: The Honorable John M. Coogan (*via email; w/attachment*)
Certificate of Service

CERTIFICATE OF SERVICE

(Docket No. P-2024-3049223)

I hereby certify that a true and correct copy of this filing 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

Harrison W. Breitman, Esquire
Christy Appleby, Esquire
Office of Consumer Advocate
Forum Place
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923
E-mail: hbreitman@paoca.org
cappleby@paoca.org

Steven C. Gray, Esquire
Rebecca Lyttle, Esquire
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
E-mail: sgray@pa.gov
relyttle@pa.gov

Bernice I. Corman, Esquire
BICKY CORMAN LAW PLLC
1250 Connecticut Avenue, NW, Suite 700
Washington, DC 20036
E-mail: bcorman@bickycormanlaw.com
*Counsel for American Home Contractors,
Inc., Enphase Energy, Inc., the Solar Energy
Industries Association, SolarEdge
Technologies, Inc., Sun Directed, Tesla,
Inc., and Trinity Solar, LLC*

Judith D. Cassel, Esquire
Micah Bucy, Esquire
Hawke, McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
E-mail: jdcassel@hmslegal.com
mrbucy@hmslegal.com
Counsel for SEF

Adeolu A. Bakare, Esquire
Rebecca Kimmel, Esquire
McNees Wallace and Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108
E-mail: abakare@mcneeslaw.com
rkimmel@mcneeslaw.com
Counsel for PPLICA

Date: May 6, 2025



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation :
for Approval of its Second Distributed : Docket No. P-2024-3049223
Energy Resources Management Plan :

**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION TO
THE JOINT SOLAR PARTIES' MOTION FOR LEAVE TO FILE SURREPLY**

TO ADMINISTRATIVE LAW JUDGE JOHN M. COOGAN:

Pursuant to 52 Pa. Code § 5.61, PPL Electric Utilities Corporation (“PPL Electric” or “Company”) hereby files this Answer to the Motion for Leave to File Surreply (“Motion”) of American Home Contractors, Inc. (“AHC”), Enphase Energy, Inc. (“Enphase”), the Solar Energy Industries Association (“SEIA”), SolarEdge Technologies, Inc. (“SolarEdge”), Sun Directed, Tesla, Inc. (“Tesla”), and Trinity Solar, LLC (“Trinity Solar”) (collectively, the “Joint Solar Parties” or “JSPs”). For the reasons explained herein, PPL Electric respectfully requests that Administrative Law Judge John M. Coogan (the “ALJ”) deny the Joint Solar Parties’ Motion.

In support of its Answer, PPL Electric states as follows:

I. ANSWER

**A. THE JSPS’ ARGUMENTS REGARDING EXTRA-RECORD EVIDENCE
HAVE NO MERIT**

The JSPs’ arguments regarding extra-record evidence are meritless and should be rejected. According to the JSPs, the materials identified by PPL Electric as extra-record evidence are part of the evidentiary record because they: (1) were cited in testimony or listed in a witness’s curriculum vitae; (2) are “authorities” that do not need to be admitted into the record; or (3) are

publicly available. (See JSP Motion at 2-3.) These arguments are fatally flawed for numerous reasons.¹

First, the ALJ should reject the JSPs' argument that the articles listed as numbers 2, 3, 4, 6, 7, and 8 in PPL Electric's Reply Brief are in the evidentiary record because they were either cited in testimony or listed in PPL Electric witness Jay Johnson's curriculum vitae. (See JSP Motion at 2-3.) Under the Commission's regulations, "[f]or an exhibit to be received into evidence, it shall be marked for identification and moved into evidence." 52 Pa. Code § 5.402(b). None of these documents were marked for identification or moved into evidence. (Tr. 98-142.) In fact, for the evidence actually in the record, the parties submitted lists of evidence to be admitted into the record, moved for their admission into the record during the hearing, and provided copies of those materials to the court reporter. (Tr. 98-142.) During the hearing, all parties heard the evidence listed and had the opportunity to object to its admission. (See *id.*) Aside from the transcript of the hearing, no other evidence has been admitted into the record in this proceeding. Moreover, a document cannot become a part of an evidentiary record merely because it was cited or referenced in witness testimony. Such a finding would expand the evidentiary record in this case to an absurd degree, where a witness's testimony and exhibits offered in any proceeding listed in their curriculum vitae suddenly becomes a part of the evidentiary record. As such, items 2, 3, 4, 6, 7, and 8 are extra-record evidence and should not be relied upon to form the basis of findings of fact or conclusions of law in this proceeding.

¹ Upon review of the JSPs' Motion and the evidentiary record, the Company agrees that one item in its list of extra-record evidence, PPL Electric's "Smart Inverters and DER Pilot Management Requirements" webpage, was admitted into the record as Exhibit JSP-BL-2SR. (See JSP Motion at 2; Exhibit JSP-BL-2SR.) As such, PPL Electric withdraws its objection to the JSPs' reliance on that item in their Main Brief. However, the remaining materials that PPL Electric cited in its Reply Brief are extra-record evidence and, therefore, should not be relied upon to make any findings in this proceeding.

Second, the JSPs' argument about public documents flatly conflicts with the Commission's regulations and evidentiary rules. Specifically, the JSPs argue that items 1 and 9 in PPL Electric's list, the FAQ page of OSHA's website and the "Sunspec protocol," should be admitted because they are "authorities" or "akin to" authorities. (JSP Motion at 2-3.) Contrary to the JSPs' position, a publicly available document or authority is not evidence unless it has been entered into the record. Indeed, Section 5.406 of the Commission's regulations provides a clear method for entering public documents or authorities issued by the Commission or other governmental agencies into the record. *See* 52 Pa. Code § 5.406. However, these regulations do not allow public documents to be admitted into the record after the record is closed. As the Commission has explained:

Although a litigant may be permitted under Section 5.406 of our Regulations . . . to offer public documents into evidence, this section does not grant a party the right to present such evidence after the record is closed . . . The Applicant contends it is necessary to submit this extra-record evidence to rebut arguments set forth in the Protestant's Exceptions. However, the Protestant's arguments . . . were clearly raised during the hearing.

The Applicant was on notice as to the Protestant's arguments prior to the close of the record, had the opportunity to present additional evidence, but did not do so in a timely manner. In our view, the Applicant has not shown good cause to introduce this new documentary evidence at this time. Furthermore, we recognize that by taking official notice of this evidence the Protestant would not have an opportunity to offer evidence in explanation or rebuttal which could present due process concerns.²

Even assuming, *arguendo* that these items are public documents, the JSPs had ample opportunity to present these items as additional evidence but failed to do so. The JSPs cannot be permitted a

² *See Application of Pennsylvania Ambulance, LLC for the right to begin to transport, as a common carrier, by motor vehicle, persons in paratransit service, from points in Lackawanna County, to points in Pennsylvania, and return*, Docket No. A-2014-2420246, 2015 Pa. PUC LEXIS 395 at *26 (Order entered July 30, 2015) (emphasis added) (internal citations omitted).

second bite at the proverbial apple at the expense of PPL Electric’s due process rights and its ability “to offer evidence in explanation or rebuttal.”³ As such, OSHA’s FAQ webpage and the Sunspec Protocol are extra-record evidence and should not be relied upon to make any findings in this proceeding.

Third, the JSPs incorrectly claim that some of the items listed are not extra-record evidence simply because they are publicly available or known to PPL Electric. In particular, the JSPs assert that items 2 through 9 are not extra-record evidence because they are publicly available, were referenced during testimony and so are “not new,” or were provided by PPL Electric. (JSP Motion at 2-3.) Simply because a document is public or known to an opposing party does not make that document a part of the evidentiary record. As explained above, the parties admitted their evidence into the record during the hearing in this proceeding. Items 2 through 9 were not included in any of the parties’ lists of evidence and, therefore, they are not part of the record in this proceeding. The JSPs had every opportunity to introduce these materials through multiple rounds of written testimony and the hearing, but they failed to do so. It makes no difference whether these materials were known to or originated from PPL Electric.⁴ The relevant inquiry is whether the material was admitted into the record such that the other parties were provided an opportunity to review and respond. Because these items were not admitted into the record, they are extra-record evidence and, therefore, should not be relied upon to make any findings in this proceeding.

³ *Id.*

⁴ *See, e.g., Moyer v. PPL Electric Utils. Corp.*, Docket No. C-2017-2629683, 2021 Pa. PUC LEXIS 486 at *28 (Order entered Oct. 28, 2021) (“*Moyer*”) (finding that the Commission properly granted PPL Electric’s Motion to Strike quarterly reports filed by the Company at another docket from the complainant’s Exceptions because they constituted extra-record evidence); *Application of The York Water Company for Approval of Emergency Interconnect Agreement Between The York Water Company and Dallastown-Yoe Water Authority*, Docket Nos. U-2017-2610587, et al., 2019 Pa. PUC LEXIS 7 at *41-42 (Order entered Jan. 17, 2019) (“*Application of York Water*”) (excluding York Water’s Board of Directors’ minutes and other internal emails from the record, finding that “[t]hese documents are not in the record and Red Lion has offered no excuse for its failure to present this evidence prior to the close of record”).

In sum, the JSPs’ arguments have no merit, and the ALJ and Commission should disregard their extra-record evidence and arguments based thereon to preserve parties’ due process rights. The Commission has explained that “[t]he inclusion of extra-record evidence in a Brief violates the principle of fundamental fairness and violates the due process rights of other parties who have no opportunity to cross examine a witness in a separate hearing.”⁵ As such, the Commission regularly strikes or disregards extra-record evidence, including when submitted by *pro se* complainants.⁶ As a sophisticated party represented by counsel, the JSPs should be held to the same standard as every other litigant that appears before the Commission. Further, the JSPs have provided no explanation for why they did not include these items with their testimony or move for their admission during the hearing. As the Commission has stated, “[i]t is axiomatic that this Commission must base its decisions on the evidence in the record, and we are prohibited from looking beyond the record for evidence not previously supplied to support a desired finding of fact or conclusion of law.”⁷ Allowing the JSPs to introduce new evidence and arguments relying on that evidence at the briefing stage would prejudice PPL Electric and deprive it of its due process rights, which include the Company’s right to “respond to this evidence and the arguments based on it.”⁸ Thus, the ALJ and Commission should reject the JSPs’ arguments and should not rely on the JSPs’ extra-record evidence to make any findings in this proceeding.

⁵ *Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program*, Docket No. M-2009-2093215, 2009 Pa. PUC LEXIS 2301 (Order entered Oct. 28, 2009) (citing *Joint Application of Verizon Communications, Inc. and MCI, Inc. For Approval of Agreement and Plan of Merger*, 2006 Pa. PUC LEXIS 22 (Order entered Jan. 11, 2006)).

⁶ *See, e.g., Chenosky v. Met. Edison Co.*, Docket No. C-2018-3007622, 2024 Pa. PUC LEXIS 283 at *23 (Order entered Sept. 12, 2024) (“It is well-established that parties cannot introduce new evidence at the exceptions stage”); *Habrial v. Met. Edison Co.*, Docket No. C-2018-3005907, 2023 Pa. PUC LEXIS 336 (Order entered Dec. 21, 2023) (“We will disregard the extra-record materials . . . as the use of this extra-record information by the Commission would violate Met-Ed’s due process rights”); *Goforth v. Pennsylvania Electric Co.*, Docket No. F-2019-3013482, 2020 Pa. PUC LEXIS 617 at * 11 (Order entered Dec. 3, 2020) (“We will disregard the extra-record materials . . .”).

⁷ *See Moyer* at *28 (citing 52 Pa. Code § 5.431).

⁸ *See Hess v. Pa. PUC*, 107 A.3d 246 at 267 (Pa. Cmwlth. 2014).

B. THE JSPS' ARGUMENTS REGARDING THEIR NEW REQUESTS FOR RELIEF HAVE NO MERIT

As more fully explained in the Company's Reply Brief, the JSPs' new requests for relief should be rejected because they were improperly raised for the first time at the briefing stage, amount to a request for damages that the Commission lacks authority to award, and go beyond the scope of relief that can be granted in this voluntary Petition proceeding. (*See* PPL Electric RB at 53-56.) Specifically, the JSPs request, among other things, that the Commission order PPL Electric to "replace SolarEdge inverters in which it has installed its Device, or pay \$2 million into a fund for replacements of inverters with PPL's Devices installed and thermal damage." (JSP MB at 60.) Defending this relief in their Motion, the JSPs contend that: (1) PPL Electric is "seek[ing] to cabin the Commission's authority" under Section 1505 of the Public Utility Code; (2) PPL Electric was impliedly put on notice of these requests for relief by seeking approval of its installation method for its DER Management devices from the Commission; and (3) they are not seeking monetary damages. (JSP Motion at 3-5.) For the reasons explained below and in the Company's Reply Brief, these arguments should be rejected and the requests for relief should be denied.

Foremost, contrary to the JSPs' assertions, Section 1505 of the Public Utility Code does not apply here. Section 1505(a) of the Public Utility Code specifically provides that the statute applies to a proceeding initiated by the Commission "upon its own motion or upon complaint." 66 Pa. C.S. § 1505(a). This proceeding was initiated by PPL Electric's filing of a Petition, not a Commission motion or a complaint filed by an opposing party. As such, Section 1505 of the Public Utility Code does not apply. Accordingly, as explained in the Company's Reply Brief, if the JSPs wanted affirmative relief, they needed to file a formal complaint pursuant to Section 701 of the Public Utility Code. *See* 66 Pa. C.S. § 701. Because they failed to do so, they cannot be granted

affirmative relief in this proceeding. Furthermore, the Commonwealth Court has explained, “Section 1505 of the Public Utility Code authorizes the Commission to prescribe remedial action upon a violation of Section 1501 ‘as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public.’”⁹ Yet, the JSPs ask the Commission to prescribe unsupported and unjustified relief in the absence of any finding that the Company has violated the Public Utility Code, the Commission’s regulations or orders, or the Company’s Commission-approved tariff. Therefore, the JSPs’ arguments based on Section 1505 of the Public Utility Code have no merit.

In addition, the JSPs’ argument that PPL Electric was impliedly put on notice that the JSPs would raise these sweeping new requests for relief in their Main Brief should be rejected. From the JSPs’ perspective, PPL Electric was somehow provided notice that the JSPs would request this unprecedented relief based on disputed testimony alleging that PPL Electric’s installation method for its DER Management devices is unsafe. (JSP Motion at 3-4.) This argument is meritless. The Company had no knowledge of these proposals prior to briefing and so had no opportunity to develop its own testimony in response or to cross-examine the JSPs’ witnesses to examine the proposals in detail. As explained in the Company’s Reply Brief, if the ALJ or Commission were to consider or grant this requested relief now, PPL Electric’s due process rights would be violated.¹⁰

⁹ *Sunoco Pipeline, L.P. v. Pa. PUC*, 295 A.3d 37 at 58 (Pa. Cmwlth. 2023) (“*Sunoco*”) (emphasis added); see also *Povacz v. Pa. PUC*, 280 A.3d 975 at 983 n.5 (Pa. 2022).

¹⁰ See *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (citing *Davidson Unemployment Compensation Case*, 189 Pa. Super. 543, 151 A.2d 870 (Pa. Super. 1959); *Shenandoah Suburban Bus Lines, Inc.*, 46 A.2d 26 (Pa. Super. 1946)) (stating that “[a]mong the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal.”); *Mid-Atlantic Power Supply Ass’n v. PECO Energy Co.*, Docket Nos. P-00981615, *et al.*, 1999 Pa. PUC LEXIS 30, at *54-55 (Order entered May 19, 1999) (concluding that a party entitled to due process must be given “adequate notice” and a “[m]eaningful opportunity to be heard,” which includes “reasonable examination and cross-examination”).

Further, the scope of JSPs' requested relief demonstrates why it is unreasonable to wait until the briefing stage to request new relief. The request is vague, unreasonably broad, and utterly unsupported by the record in this case. The Commission has rejected similarly vague proposals raised for the first time in briefs. For example, in 2014, Columbia Gas proposed a new Pilot Rider NAS that would require "potential new residential customers to pay a large up front deposit in order for Columbia to extend its facilities to provide natural gas service."¹¹ For the first time in its main brief, a party proposed "that Columbia contact every structure owner with a mailing or delivery address along the potential Pilot Rider NAS extension to determine whether each owner will connect to the new line extension, and then 'follow-up' with those structure owners if they do not accept service should be rejected."¹² However, this proposal was rejected, not only because that party failed to present the proposal until its Main Brief, but also because the party "fail[ed] to detail what costs would be involved with contacting all of these customers or whether contacts would be in-person, by repeated mailing, or by telephone calls." *Id.* The JSPs' proposal is like that proposal in *Columbia*, in that it contains no details regarding the implementation of its request, such as the costs to administer the replacement process, the timing and method of replacement, or how customers would be provided notice, contacted, or identified as eligible for such replacements. Thus, the JSPs' proposal should also be rejected.

Finally, the JSPs erroneously contend that the request to establish a \$2 million inverter replacement fund is not a request for damages. The JSPs attempt to characterize the fund as an alternative "recommendation as to a mechanism that could achieve the remedial objective of having PPL absorb the cost associated with replacing inverters it may have damaged." (JSP

¹¹ See *Pa. PUC, et al. v. Columbia Gas of Pa., Inc.*, Docket Nos. R-2014-2407345, et al., 2014 Pa. PUC LEXIS 424 (Recommended Decision issued Aug. 22, 2014), *adopted in relevant part by* (Order entered Oct. 23, 2014) ("*Columbia*").

¹² *Id.* at 123.

Motion at 4-5.) As explained in PPL Electric’s Reply Brief, the JSPs’ requested relief amounts to an improper request for damages. (PPL Electric RB at 54.) Customer complainants who request similar compensation for items allegedly damaged by utilities routinely have these requests for relief stricken as impertinent matter because the Commission lacks the authority to award damages.¹³ The ALJ and Commission should adhere to its long line of precedent and reject the JSPs’ unprecedented request for PPL Electric to pay \$2 million in damages toward the replacement of SolarEdge inverters.

Based on the foregoing and the arguments set forth in pages 52 through 58 of the Company’s Reply Brief, the JSPs’ Motion for Leave to File Surreply should be denied.

¹³ See, e.g., *Caraballo v. PPL Electric Utils. Corp.*, Docket No. C-2023-3040988 (Interim Order issued Aug. 21, 2023) (granting preliminary objection and striking request for relief from complaint as impertinent matter); *Myers v. PPL Electric Utils. Corp.*, Docket No. F-2021-3030194 (Interim Order issued March 4, 2022); *Moyer v. PPL Electric Utils. Corp.*, Docket No. C-2017-2629683 (Interim Order issued Dec. 21, 2017) (striking request for monetary damages from the complaint).

III. CONCLUSION

For the reasons set forth above, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge John M. Coogan deny the Joint Solar Parties' Motion for Leave to File Surreply.

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

David B. MacGregor (ID # 28804)
Megan E. Rulli (ID # 331981)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
717-612-6012
Fax: 717-731-1985
E-mail: dmacgregor@postschell.com
mrulli@postschell.com

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

Dated: May 6, 2025

Attorneys for PPL Electric Utilities Corp.