HMS Legal

Regulation is a maze. We can show you the way!

Todd S. Stewart
717.703.0806
tsstewart@hmslegal.com

501 Corporate Circle, Suite 302, Harrisburg, PA 17110 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

May 29, 2025

VIA ELECTRONIC FILING

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

RE: TotalEnergies Distributed Generation USA, LLC v. PPL Electric Utilities Corporation; Docket No. C-2024-3051475; **MAIN BRIEF OF TOTALENERGIES DISTRIBUTED GENERATION USA, LLC**

Dear Secretary Homsher:

Enclosed for filing with the Commission is the Main Brief of TotalEnergies Distributed Generation USA, LLC in the above-captioned matter. Copies of this Brief have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions related to this filing, 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).

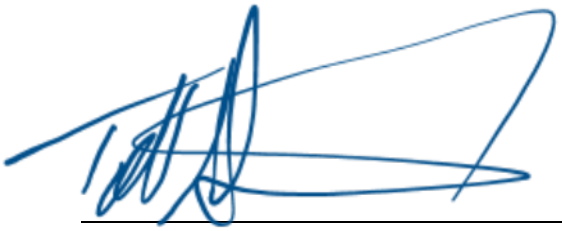
VIA ELECTRONIC MAIL

Kimberly A. Klock
Michael J. Shafer
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
kklock@pplweb.com
mjshafer@pplweb.com
Counsel for PPL Electric Utilities Corporation

Devin T. Ryan
Alice Wade
Post & Schell, P.C.
One Oxford Centre
301 Grant Street, Suite 3010
Pittsburgh, PA 15219
dryan@postschell.com
alice.wade@postschell.com
Counsel for PPL Electric Utilities Corporation

Megan E. Rulli
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101
mrulli@postschell.com
Counsel for PPL Electric Utilities Corporation

Anthony D. Kanagy
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
akanagy@postschell.com
Counsel for PPL Electric Utilities Corporation



Todd S. Stewart

Dated: May 29, 2025

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

TotalEnergies Distributed Generation USA, LLC,	:	
Complainant,	:	
	:	Docket No. C-2024-3051475
v.	:	
	:	
PPL Electric Utilities Corporation	:	
Respondent.	:	

MAIN BRIEF
OF TOTALENERGIES DISTRIBUTED GENERATION USA, LLC

Todd S. Stewart, Attorney ID No. 75556
HMS Legal LLP
501 Corporate Circle, Suite 302
Harrisburg, PA 17110
(717) 236-1300
(717) 236-4841 (fax)
tsstewart@hmslegal.com

Counsel for TotalEnergies Distributed Generation USA, LLC

DATED: May 29, 2025

TABLE OF CONTENTS

APPENDICES

TABLE OF AUTHORITIES

Cases

Statutes

Rules

I. INTRODUCTION AND STATEMENT OF THE CASE

This case began as a jointly filed Formal Complaint and Petition for Emergency Order proceeding filed by Total Energies Distributed Generation USA ("TEDGUSA") on September 30, 2024 seeking to prohibit PPL from enforcing a newly imposed 25% non-refundable deposit requirement on ten solar photovoltaic net metered customer generator projects that had gone through PPL's new interconnection requirements and for which deposits were due, or the projects would lose their places in line for going through PPL's process. TEDGUSA's request for emergency order was granted by the Presiding Administrative Law Judges' Interim Emergency Order, issued October 15, 2024, and was later embodied in an agreement between the parties that avoided the need to brief that matter before the Commission. The Commission issued an Order on November 14, 2025, where it found that the issue of the legality of the deposit requirement would be resolved in the Complaint docket – this docket.

During the course of the litigation, PPL twice claimed to have modified its position regarding the 25% deposit. First, it claimed that it would spend as much of the deposit that it could so that even if the deposit was refundable, there would be nothing left to refund (see Exhibit CE-1, PPL Response to TEDGUSA Set I, No. 5) and subsequently changed its position once again stating that the deposit is refundable, subject to certain conditions. (Exhibit CE-4). However, as admitted by PPL's witness, Mr. Olsen, PPL has not made any changes to the Notice of Intent to Proceed documents that TEDGUSA executed when paying its deposits. (Tr. 43: 1-25) Nor has PPL made any other modifications to its process to address the other major component of the Complaint – that PPL imposes the deposit requirement in a manner that continues to place developers such as TEDGUSA at maximum risk by demanding such a large deposit on such a short time clock (45 days), based on the Interconnection Impact Review ("IIR"), which is the first insight

provided by PPL into the potential cost of a project and which has margin of error of +/- 50%. PPL's deposit requirements are not reasonable and are being implemented in a manner that is contrary to the Commission's regulations, and as announced by PPL, is inspired by PPL's intention to protect the rights of projects further back in the queue, even though the Regulations authorize no such requirements for projects further back in the queue. (TEDGUSA St. 1-R, 2-4).

While it could appear at first glance that PPL's "change" in position resolves the refundability issue; it does not. PPL still intends to encumber the deposit to the fullest extent possible, and there is no transparency into when and under what conditions it may do so, either to fund the engineering for the project, or to purchase outright or to place deposits on long-lead-time equipment. (TEDGUSA St. No. 1-R, 2). Similarly, PPL has not "changed" its position that it is proper to use a developer such as TEDGUSA's deposit to pay to re-study a project after the developer decided to withdraw a project. As Mr. Elias made clear on the stand, TEDGUSA is not opposed to paying for what is necessary, when it is necessary, but does not agree that deposits should be made non-refundable by their own terms or through the timing of the demand for deposits or the use of deposits in ways that increase risk for developers. (Tr. 20:10-17). In short, PPL's deposit requirement, in total, imposes unnecessary risk on net-metered projects and will cause more projects to be withdrawn than otherwise would have occurred.

II. LEGAL STANDARD

The complaining party before the Commission generally bears the burden of proof. 66 Pa.C.S. § 332(a). In proving the matter complained-of, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa*., 72 Pa. PUC 196 (1990). In this case, TEDGUSA has established PPL's failure to provide reasonable service, to comply with the Public Utility Code and the

Commission's Regulations and the unjust nature of PPL's deposit demand in the context of the interconnection of net metered projects.

"Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950). The offense complained of, as is here, must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, TEDGUSA is seeking a determination that PPL's conduct: charging a non-refundable deposit without Commission approval, then changing its policy to also completely impair the deposit so that there would be no funds to refund even if the deposit were refundable and now, suggesting that deposits are refundable (even though the testimony of TEDGUSA's witness makes it clear it is not) even as it has now failed to enact this proposed "change" by modifying its Notice of Intent document which is the document where the developer "agrees" to pay PPL's 25% deposit or lose its queue position -- is in violation of 66 Pa. C.S. §§ 1301 1304 and 1501 and the Commission's regulations at 52 Pa. Code § 75.39, et seq. TEDGUSA, therefore, has carried the burden of proof in this proceeding regarding PPL's conduct and service. PPL shares that burden, however, because this matter ultimately revolves around the rate in the form of the deposit that PPL charges, and PPL bears the burden of proving that any rate it proposes to charge TEDGUSA or any other customer, is just and reasonable – something it has failed to do. 66 Pa. C.S. § 315(a).

Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the public utility. *It is well-established that the evidence adduced by a utility to meet this burden must be substantial*.

Lower Frederick Twp. Water Co. v. Pa. PUC, 409 A.2d 505, 507 (Pa. Cmwlth. 1980) (emphasis added). *See also*, *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981). The Public Utility Code ("Code") also requires that utilities provide reasonable service. 66 Pa. C.S. § 1501. The Code defines service as:

> Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . .

66 Pa. C.S. § 102.

III. ARGUMENT

A. PPL's Deposit is an Illegal Rate

PPL demands through its Notice of Intent to Proceed ("NoIP") that customer generators, including TEDGUSA, pay a 25 % non-refundable deposit after the completion of the IIR (Tr. 43:8-14). That requirement, as stated in TEDGUSA's NoIP's, has not changed. (Tr. 43;8-14). PPL makes the demand for the deposit before PPL has proffered any agreement that binds PPL to construct or even allow interconnection. (See PPL Exhibits Go-1 through GO-4). This requirement has likewise not changed. PPL may at some point return some portion of the deposit if a project were to be withdrawn, but PPL makes no representation that any of the deposit will be available to refund to the customer-generator in such a circumstance. Indeed, PPL admits that the bulk of the deposit will be used to purchase long lead time equipment, before the engineering is complete. (Tr, 37:17-25). Nonetheless, PPL claims that the deposit is now refundable. That assertion is not accurate. The deposit continues to be an illegal rate.

The Public Utility Code, 66 Pa. C.S. § 102, defines the term "rate" as follows:

> **"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.

The 25% deposit is a "rate" as that term is defined in the Code. Even if the deposit were theoretically refundable, it would still be a rate, because it is money being demanded by PPL, and while it is true that the regulations do authorize EDCs to charge for the costs of upgrades,[1] that does not change the fact that the deposit is a rate that must be submitted and approved. That is, even if the amount of money changes, the mechanics of how the rate is calculated and how it is to be refunded, if at all, must be approved. The deposit was neither submitted nor approved. (Exhibits TE-1 and TE-2).

The rate also fails to comply with the Commission's Regulations. The Regulations do not authorize the utility to demand the payment of costs before they are incurred, and certainly not on the basis of a study that has a margin of error of +/- 50%. Neither the Regulations nor the AEPSA permit PPL the demand an arbitrary deposit amount at whatever stage of the interconnection process it chooses.[2]

As a rate, PPL's demand for a deposit is subject to the Public Utility Code's requirements that it be contained in a tariff and approved by the Commission.[3] Moreover, any rate charged must be just and reasonable.[4] PPL's requirement for a 25% deposit that could be non-refundable, depending on how PPL applies its untariffed rules, has neither been submitted to the Commission

[1] 52 Pa. Code § 75.39(e)(4).
[2] 73 P.S. § 1648.1, *et seq*.; 52 Pa. Code § 75.1, *et seq*.
[3] 66 Pa. C.S. § 1302.
[4] 66 Pa. C.S. § 1301.

nor been determined to be just and reasonable. This failure on PPL's part to file the deposit rules in its tariff, and failure to seek Commission approval of the rate, is a violation of the law.[5] PPL's failure in this proceeding to establish that the terms and conditions are just and reasonable, is further evidence of PPL's violation.

In this case, not only has PPL not sought Commission approval of its deposit requirement, but PPL has also not even modified the one-sided IRR and Notice of Customer Intent ("NoCI") documents that require the deposit to be non-refundable. PPL's non-action begs the question of why PPL has not done so. PPL's *new* position (See Exhibit TE-4-R) appears to be that the deposit was always refundable, to the extent that the deposit was not spent or encumbered, but that was not its position in the Emergency proceeding and not what is reflected in the still effective IIRs and NoCI that govern the deposits made by TEDGUSA.

As a guide to its regulations for interconnection, the Commission issued a Policy Statement at 52 Pa. Code § 69.2104 that establishes the fees for interconnection applications, and which recites that customer-generators can be required to pay the costs of studies and for engineering work. The Policy Statement also provides that "[i]f the electric distribution company must install facilities to accommodate the interconnection of the customer-generator facility, the cost of the facilities shall be the responsibility of the customer-generator."[6] Nowhere does the Policy Statement suggest that utilities are or should be authorized to collect those costs in the form of a deposit before they are incurred and based on the substantial margin of error of the IIR, and before

[5] ("The Public **Utility** Code (the Code) requires that "every rate made, demanded or received by any public **utility** . [*3] . . shall be just and reasonable and in conformity with regulations and orders of the Commission." 66 Pa. C.S. § 1301. The Code further mandates that no **utility** shall demand or receive a rate that is greater or less than that specified in its **tariffs**. 66 Pa. C.S. § 1303. A **utility** cannot unreasonably discriminate for or against a particular customer by establishing a special rate for them. 66 Pa. C.S. § 1304. The Respondent, therefore, can only **charge** the **rates** specified in its **tariff** on file with the PUC." *Walter J. Weir v. UGI Utilities, Inc. – Electric Division*; 2008 Pa. PUC LEXIS 252, *2-3, 2008 Pa. PUC LEXIS 252.

[6] 52 Pa. Code § 69.2104(3).

the costs are definitively known. The deposit is not, as characterized by PPL, simply asking TEDGUSA to prepay costs for which TEDGUSA would ultimately be responsible. It is asking TEDGUSA to pay what could be a large sum of money, some of which could go to pay for engineering, but also for placing deposits for, or even paying for equipment before the engineering is completed and which turns out to not be needed. PPL also testified that it could charge against the deposit if PPL felt it needed to re-study a project where a developer had already decided the project was not viable. Doing so would be a penalty and would run counter to PPL's claim that it would return unspent portions of the deposit if a project were withdrawn.

PPL claims it may be able to recover deposits or repurpose equipment, but it offers no guarantee that it will be able to do so, which does nothing the lessen the risk. Remember that PPL has only just stated that it would return the "unspent" portion, if any, of a deposit. As Christopher Elias, TEDGUSA's witness testified in his Rebuttal Testimony:

> PPL's process is not verifiable, which raises additional questions and risks because we have no way of knowing: 1) if PPL has placed any deposits and if so, how much; 2) if such deposits are refundable; 3) in the case of a project being withdrawn, whether PPL requested a refund, and if the refund were made; or 4) if PPL was able to repurpose equipment somewhere else on its system. (TEDGUSA St. No. 1-R at 5)

In short, the regulations do not authorize charging a deposit for upgrades or facilities until the work is completed. While TEDGUSA has made clear that it does not oppose paying for the facilities study or the engineering, it clearly should not be required to pay for facilities potentially years before they are constructed.

B. PPL's Insistence on "Shovel Ready" Projects is Not Supported and Defies Practical Reality.

PPL witness Olsen suggests several times that PPL is concerned for the projects that are further back in the queue and that is one of the reasons that it decided to demand a 25% deposit

based on the results of the IIR, even though it has a margin of error of as much as +/- 50%. Simply demanding a deposit when the costs are subject to such variation is unreasonable. Adding in the fact that the IIR is the first time that the developer has any idea of the eventual cost of the improvements – even if the estimate is inaccurate – and the fact that PPL demands the deposit be paid within 45 days, there is insufficient time for the developer to de-risk a project to the point where a developer would be able to advance the project. What this means in a practical sense, PPL's deposit rules are likely to and already have caused projects to be withdrawn because there was too much uncertainty at the time. (TEDGUSA St. 1-R at 10).

The unrefuted testimony makes it clear that the main reason projects fail is because the costs of interconnection are higher than expected. PPL's insistence that projects be shovel ready and the actions it takes to enforce that policy, make it more likely that projects will fail. This happens because the IIR is the first time a developer is given any inkling of the final cost of the project, even with the large margin of error. PPL's policy of demanding a 25 % deposit, which can be millions of dollars, within 45 days, does not provide adequate time for a developer to derisk the project – i.e., to finish the other processes – mostly permitting. Logic means that a developer would not expend the money for those actions before it knows if the project is viable, which depends on the cost of interconnection. In short, TEDGUSA agrees with paying for the study or the engineering, or even equipment, but at the appropriate time. (Tr. 25).

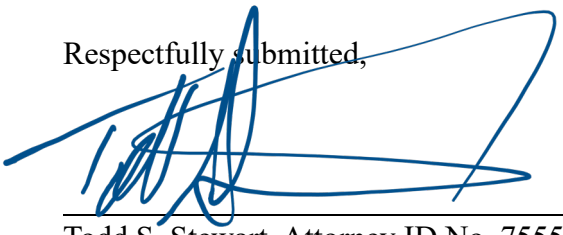
PPL's insistence that projects be ready to be constructed when they are submitted defies reason and is not found in the AEPSA or in the Commission's Regulations. There is no requirement that projects be shovel ready when filed, and no concern stated for projects further back in the queue. PPL is enforcing a policy that runs counter to its responsibility to allow for net metering on a "first come first served basis" and is violating the law in doing so.

IV. CONCLUSION

When PPL first imposed the 25% non-refundable deposit, it embodied that change in several communications to developers and in the NoIP document that developers must sign in order to proceed. PPL has not changed those documents even though it now claims that the deposits are refundable. The testimony in this case is clear that from a risk perspective, PPL's alleged change has changed nothing. Customer-generators are still being put at risk because the PPL process demands a large and unauthorized deposit, at the same time and first time it is even giving the developer a glimpse at what the project upgrades will cost, and it is clear that PPL intends to spend as much of the deposit as it can, even if some of it may be refundable. The risk to the projects remains the same.

The facts are not disputed, PPL imposed a new deposit requirement, before it even completes the engineering, from which it intends to pay for equipment or deposits for equipment that may or may not be refundable. PPL did not change the required documents to effectuate this alleged change, nor did it seek Commission approval before imposing this deposit rate nor did it include the rate in its tariff. What PPL has done is to violate the Public Utility Code and the Regulations by demanding payment before the project is begun, something it is not permitted to do. PPL must be enjoined from demanding such a deposit until such time as it has been approved by the Commission as being just and reasonable, even though in this proceeding it has failed to demonstrate, let alone prove, that it is either.

Respectfully submitted,



Todd S. Stewart, Attorney ID No. 75556
HMS Legal LLP
501 Corporate Circle, Suite 302
Harrisburg, PA 17110
(717) 236-1300
(717) 236-4841 (fax)
tsstewart@hmslegal.com

Counsel for TotalEnergies Distributed Generation USA, LLC

DATED: May 29, 2025

APPENDIX A

PROPOSED FINDINGS OF FACT

1. TEDGUSA designs, builds, finances and operates both front of the meter and behind the meter commercial scale solar and storage facilities across the United States. TEDGUSA has 1400 project sites generating 1.4 GW of solar energy. (TEDGUSA St. No. 1, 2:9-12).

2. TEDGUSA had 10 projects in the PPL service territory for which deposits in the total amount of $2,340,834.00 were paid to PPL. (TEDGUSA St. No. 1., 2:13-15).

3. In February of 2024, PPL changed its interconnection process for net-metering customer generators. Rather than submitting projects to the PUC for approval after deeming them complete, PPL performed a study to determine an initial cost estimate, the estimate could vary by as much as 50% and then demanded a 25% non-refundable deposit from the developer, with the deposit being due within 45 days of the presentation of the study to the developer. (TEDGUSA St. No. 1, 3:1-18.).

4. In the Direct Testimony of Mr. Olsen, PPL claimed that it was no longer demanding a "non-refundable" deposit. (PPL St. 1, 12:18-13:4). However, Mr. Olsen admitted that PPL had not modified any of the documents signed by any developer to memorialize its "change." (Tr. 43:8-13).

5. Mr. Olsen also noted that PPL would spend the deposit on the engineering required for the project and to purchase or pay deposits for long-lead-time equipment, before the engineering was complete. (PPL St. 1, 15:19-16:7).

6. Mr. Olsen also testified that PPL may restudy a project, if a developer were to withdraw a project, and charge the deposit of the withdrawing developer for the re-study. (Exhibit TE-4).

7. PPL demands the deposit before PPL has made a commitment the interconnect, in the form of an executed interconnection agreement, or even before PPL submits the project to the PUC for review. (TEDGUSA St. No. 1-R, pp.4).

8. Under PPL's scheme it is not accountable for how it encumbers or disburses the deposit. (TEDGUSA St. No. 1, 5:6-15).

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. The Pennsylvania Public Utility Code requires that any rate be approved by the Commission and contained in an approved Tariff. 66 Pa. C.S. §§ 1301, 1302. PPL's deposit is neither contained in its tariff nor approved by the Commission and clearly is a rate as that term is defined in 66 Pa. C.S. § 102. PPL's deposit rate violates the Public Utility Code.

2. The Commission's Regulations at 52 Pa. Code § 75.39(e)(4), do not authorize an EDC to demand payment for any portion of the costs of interconnection prior to the costs being incurred. The Commission's policy statement on fees and costs, likewise, would require customer generators to pay for the costs of interconnection, but does not require that said costs be paid in advance, particularly here where the basis of the charge has a margin of error of +/- 50%. 52 Pa. Code § 69.2104(3).

3. PPL's deposit rate methodology does not protect customers from harm, because any harm that would be imposed on them, absent a deposit, would be due to PPL spending money on equipment before completion of the engineering, which is entirely in PPL's control. TEDGUSA has agreed to pay for the engineering up front.

4. PPL's Deposit seeks as one of its primary goals, the protection of projects further back in the queue. Neither the AEPSA, the Public Utility Code, nor the Commission's Regulations even discuss that goal, let alone authorize deposits to encourage "shovel ready projects". Accordingly, using such arguments as a justification for the otherwise illegal deposit fails as a matter of law.

5. PPL's alleged change in policy in the middle of this proceeding cannot be sustained as PPL has not memorialized that alleged change in any applicable document. Mr. Olsen's testimony on that issue is not credible.

6. PPL's deposit -- because PPL still intends to spend most of it before the engineering is completed, and because the IIR has a margin of error of +/- 50% -- is effectively non-refundable because TEDGUSA will have no reasonable expectation of ever receiving any refund of unspent deposit money if a project is withdrawn.

7. PPL's deposit is neither just nor reasonable, is not approved by the Commission, is not contained in its tariff and is illegal.

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

1. PPL's 25% deposit is not in compliance with the Public Utility Code, Sections 1301 and 1302 and is hereby permanently enjoined from being enforced by PPL until such time as the deposit requirement is approved by the Commission.

2. To the extent that PPL intends to perform or has performed engineering studies for TEDGUSA projects for which deposits already have been paid, PPL may deduct charges from those deposits solely for the actual costs of such studies. PPL may not encumber, spend or pledge deposits provided by TEDGUSA until the detailed engineering is completed and the needed equipment and costs are confirmed.

3. To the extent that any TEDGUSA project for which a deposit has been made has been subsequently withdrawn or is withdrawn in the future, PPL shall fully refund such deposit, less any amount actually spent on detailed engineering.