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September 9, 2019

VIA ELECTRONIC FILING


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

**Re: Petition of PPL Electric Utilities Corporation for Approval of Tariff Modifications
and Waivers of Regulations Necessary to Implement its Distributed Energy
Resources Management Plan
Docket No. P-2019-3010128**

Dear Secretary Chiavetta:

Enclosed for filing is the Answer of PPL Electric Utilities Corporation to the Preliminary Objection Filed by Natural Resources Defense Council & Sunrun, Inc. in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/jl
Enclosures

cc: Honorable Emily I. DeVoe
Certificate of Service

CERTIFICATE OF SERVICE

(Docket No. P-2019-3010128)

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).

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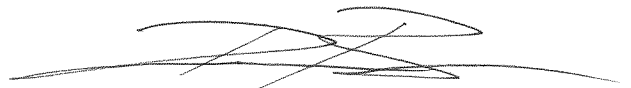
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Date: September 9, 2019

A handwritten signature in black ink, appearing to read "Devin Ryan", written over a horizontal line.

Devin Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities :
Corporation for Approval of Tariff :
Modifications and Waivers of : Docket No. P-2019-3010128
Regulations Necessary to Implement its :
Distributed Energy Resources :
Management Plan :

**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION TO
THE PRELIMINARY OBJECTION FILED BY
NATURAL RESOURCES DEFENSE COUNCIL & SUNRUN, INC.**

TO ADMINISTRATIVE LAW JUDGE EMILY I. DEVOE:

Pursuant to 52 Pa. Code §§ 5.61 and 5.101, PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby files this Answer to the Preliminary Objection filed by Natural Resources Defense Council (“NRDC”) and Sunrun, Inc. (“Sunrun”) to the Company’s August 22, 2019 letter. In their Preliminary Objection, NRDC and Sunrun request that PPL Electric’s August 22, 2019 letter be stricken because, according to them, it failed to conform to the Commission’s rules of procedure and was unauthorized.

NRDC and Sunrun’s Preliminary Objection completely lacks merit and should be denied. The Company’s letter is not a “pleading” to which a party can file a preliminary objection under the Commission’s regulations. Moreover, NRDC and Sunrun fail to recognize that parties routinely file letters in Commission proceedings. Further, to the extent that the Company’s letter did not comply with the Commission’s regulations, those regulations should be liberally construed when no parties’ substantive rights have been affected. No parties’ substantive rights were affected by PPL Electric filing the August 22, 2019 letter because the matter had already been referred to the Office of Administrative Law Judge (“OALJ”) on August 6, 2019. To the contrary, if PPL Electric’s Petition were dismissed without an evidentiary hearing and the

Company were prohibited from responding to the issues and allegations raised by the other parties and commenters about the Company's above-captioned Petition, PPL Electric would be denied due process of law.

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

I. BACKGROUND

1. On May 24, 2019, PPL Electric filed its Petition for Approval of Tariff Modifications and Waivers of Regulations Necessary to Implement its Distributed Energy Resources Management Plan ("DER Management Plan") with the Commission. The DER Management Plan will govern the interconnection and operation of new Distributed Energy Resources ("DERs") deployed in the Company's service territory.

2. On May 29, 2019, PPL Electric filed a letter requesting that notice of the Petition be published in the *Pennsylvania Bulletin*.

3. On June 29, 2019, notice of the Petition was published in the *Pennsylvania Bulletin*. See 49 Pa.B. 3454. Per that notice, formal protests and petitions to intervene were due on or before July 15, 2019.

4. On July 10, 2019, a Secretarial Letter was issued directing PPL Electric to serve the Secretarial letter upon additional solar entities notifying them of the Petition. Further, the deadline to file protests/comments was extended until 4:30 PM on July 30, 2019.

5. On July 12, 2019, PPL Electric filed a letter and certificate of service evidencing that it served the Secretarial Letter upon additional solar entities, as required by the Secretarial Letter.

6. On July 20, 2019, the substance of the Secretarial Letter was published as a notice in the *Pennsylvania Bulletin*. See 49 Pa.B. 3853.

7. On July 29, 2019, Trinity Solar filed Comments on the Company's Petition.
8. On July 30, 2019, the Office of Consumer Advocate ("OCA"), NRDC, and Sunrun filed Answers to the Petition. NRDC and Sunrun also filed Petitions to Intervene.
9. Further, on July 30, 2019, Comments were filed by Sustainable Energy Fund ("SEF"), GridLab, the Solar Unified Network of Western Pennsylvania ("SUNWPA"), Energy Independent Solutions, LLC ("EIS"), the Interstate Renewable Energy Council, Inc. ("IREC"), the Pennsylvania Solar Energy Industries Association ("PASEIA"), and Exact Solar.
10. No parties filed preliminary objections to the Company's Petition.
11. Based on a review of the online docket, the matter was assigned first to the Office of Special Assistants ("OSA") on August 6, 2019, and then transferred later that same day to OALJ.
12. On August 22, 2019, PPL Electric filed a letter inquiring about the procedural status of the proceeding and requesting that the matter being assigned to an administrative law judge for hearings.
13. Also on August 22, 2019, an Interim Order was issued granting the Petitions to Intervene filed by NRDC and Sunrun.
14. On August 28, 2019, Administrative Law Judge Emily I. DeVoe ("ALJ") issued the Prehearing Conference Order, which set forth certain procedural rules for the proceeding and directed the parties to file prehearing memoranda on or before Noon on September 9, 2019. A Notice also was issued scheduling the telephonic prehearing conference for September 11, 2019, at 2:00 PM.
15. On August 30, 2019, NRDC and Sunrun filed: (1) a Preliminary Objection to PPL Electric's August 22, 2019 letter; and (2) a Motion for Leave to Reply & Reply to PPL Electric's

August 22, 2019 letter. The pleadings were served by email and first class mail. However, the email serving the pleadings was sent after 4:30 PM, and the hard copies were sent via first class mail. Therefore, under the Commission’s regulations, the Company was served by email on September 3, 2019, and by first class mail on August 30, 2019.¹ Consequently, PPL Electric’s Answer to the instant Preliminary Objection is not due until September 12, 2019.²

16. On September 3, 2019, SEF filed a Petition to Intervene.

II. ANSWER TO NRDC AND SUNRUN’S PRELIMINARY OBJECTION

17. In their Preliminary Objection,³ NRDC and Sunrun argue that the Company’s August 22, 2019 letter should be stricken because it allegedly “fails to conform to the Commission’s rules of procedure and is not authorized under those rules.” (Preliminary Objection ¶ 2.) Further, NRDC and Sunrun claim that although parties can file replies to answers seeking affirmative relief or raising new matter, PPL Electric “does not assert that any party is seeking affirmative relief or that a new matter has been raised,” and the Company’s letter

¹ See 52 Pa. Code § 1.56(a) (stating that “[t]he date of service shall be the earliest day when the document served” is, among other things, “transmitted by telefacsimile or electronic mail as provide in § 1.54(b) (relating to service by a party) prior to 4:30 p.m. local prevailing time” or “deposited in the United States mail”); *id.* § 1.56(b) (“Unless otherwise prescribed by the Commission or presiding officer, whenever a party is required or permitted to do an act within a prescribed period after service of a document upon the party and the document is served by first-class mail by the United States Postal Service, 3 days shall be added to the prescribed period.”).

² See 52 Pa. Code § 5.101(f)(1) (stating that answers to preliminary objections may be filed within 10 days of the service date).

³ PPL Electric notes certain procedural defects with NRDC and Sunrun’s Preliminary Objection. First, there is no separate Notice to Plead accompanying the Preliminary Objection. Their Preliminary Objection simply includes a sentence on the first page of the Preliminary Objection that a response is due within 10 days. (Preliminary Objection, p. 1.) This is not consistent with Commission practice and procedure, under which a formal Notice to Plead accompanies preliminary objections. See 52 Pa. Code § 5.101(b) (“A preliminary objection must contain a notice to plead which states that an answer to the objection shall be filed within 10 days of the date of service of the objection.”); see also Pa. R.C.P. No. 1026. Second, all “[p]leadings” filed with the Commission, including preliminary objections, “must be divided into numbered paragraphs.” 52 Pa. Code §§ 1.31(a), 5.1 (stating that “[p]reliminary objections” are “pleadings in an action before the Commission”). Although Section II of the Preliminary Objection is divided into numbered paragraphs, Section I containing the “Background” of the proceeding is not.

was filed more than 20 days after the due date for the service of any such replies. (Preliminary Objection ¶ 3.)

18. The substantive portion of NRDC and Sunrun's Preliminary Objection was set forth in three numbered paragraphs.⁴ Consistent with Section 5.101(f)(2) of the Commission's regulations, 52 Pa. Code § 5.101(f)(2), PPL Electric responds to those numbered paragraphs with corresponding numbered paragraphs set forth below:

A. NRDC AND SUNRUN'S PRELIMINARY OBJECTION SHOULD BE DENIED

1. Denied. Paragraph 1 of NRDC and Sunrun's Preliminary Objection is a legal conclusion to which no response is required. To the extent a response is deemed necessary, PPL Electric denies the same. Furthermore, Paragraph 1 quotes and characterizes 52 Pa. Code § 5.101(a)(2), which speaks for itself. Therefore, any quotation or characterization thereof is denied. Moreover, as explained in the following paragraphs, NRDC and Sunrun's Preliminary Objection should be denied.

2. Denied. Paragraph 2 of NRDC and Sunrun's Preliminary Objection contains legal conclusions to which no response is required. To the extent a response is deemed necessary, PPL Electric denies the same. Furthermore, Paragraph 2 quotes and characterizes 52 Pa. Code § 5.61, which speaks for itself. Therefore, any quotation or characterization thereof is denied.

In addition, NRDC and Sunrun's Preliminary Objection should be denied for several reasons. First, the Company's letter is not a pleading to which a party can file a preliminary objection under the Commission's regulations. Section 5.101 of the Commission's regulations specifically states that "[p]reliminary objections are available to parties and may be

⁴ See note 3, *supra*.

filed in response to a pleading except motions and prior preliminary objections.” 52 Pa. Code § 5.101(a) (emphasis added). Here, the Company’s letter is not a pleading as defined by the Commission’s regulations. *See id.* § 5.1(a). Moreover, the reason the Company filed the August 22, 2019 letter was to inquire about the procedural status of the proceeding and request that the matter be referred to an administrative law judge for an evidentiary hearing. In fact, the letter explicitly “requests that the instant matter be assigned for hearing and disposition before an administrative law judge without delay.” (August 22, 2019, letter, p. 2.) Therefore, if anything, the Company’s letter should be considered a “motion” to transfer the case to an administrative law judge, to which parties cannot file preliminary objections. *See* 52 Pa. Code § 5.101(a) (stating that parties cannot file preliminary objections to motions).

Second, NRDC and Sunrun fail to recognize that parties routinely file letters in Commission proceedings, even if there is no explicit provision in the Commission’s regulations governing the filing of letters.⁵ In fact, in *Pa. PUC v. T.W. Phillips Gas & Oil Co.*, T.W. Phillips Gas & Oil Company (“TWP”) “filed a letter responding to the Answer of OCA” that was filed in response to TWP’s Purchase of Receivables Petition. 2010 Pa. PUC LEXIS 1598, at *8-9 (Oct. 5, 2010) (Recommended Decision), *adopted without modification*, Docket Nos. R-2010-2167797, *et al.* (Order entered Nov. 4, 2010). Therefore, the Company’s filing of the August 22,

⁵ *See, e.g.,* *Petition of PPL Elec. Utils. Corp. for Approval of a Default Serv. Program and Procurement Plan for the Period June 1, 2017 through May 31, 2021*, 2018 Pa. PUC LEXIS 39, at *5 (Order entered Feb. 9, 2018) (observing that PPL Electric and other parties filed letters in support or in opposition to a petition to withdraw the petition); *Pa. PUC v. UGI Utils. Inc. – Gas Div.*, 2004 Pa. PUC LEXIS 404, at *48 (Oct. 5, 2004) (Recommended Decision) (noting that the Office of Trial Staff “filed a letter of support of UGI’s Motion”), *adopted without modification*, Docket Nos. R-00049422, *et al.* (Order entered Nov. 19, 2004); *Pa. PUC v. Met. Edison Co.*, 2006 Pa. PUC LEXIS 116, at *17 (Oct. 31, 2006) (Recommended Decision) (stating that “NEMA filed a letter requesting that its Protest/Complaint and Petition to Intervene be amended to reflect its application to all the dockets of the consolidated case”), *order ruling on exceptions*, Docket Nos. R-00061366, *et al.* (Order entered Jan. 11, 2007); *In Re: Application of Trans-Allegheny Interstate Line Co. (TrAILCo)*, 2008 Pa. PUC LEXIS 62, at *586 (Aug. 15, 2008) (Recommended Decision) (observing that “TrAILCo filed a letter response to ECC’s objections”), Docket Nos. A-110172, *et al.* (Order entered Dec. 12, 2008).

2019 letter requesting that the matter be assigned for hearings before an administrative law judge is well within the bounds of past Commission practice and procedure.

Third, to the extent that the Company's letter did not comply with the Commission's regulations, those regulations should be liberally construed and permit the filing of the letter. Specifically, Section 1.2(a) of the Commission's regulations provides that the Commission's procedural rules "shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable" and that "[t]he 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." 52 Pa. Code § 1.2(a) (emphasis added).

Here, no parties' substantive rights were affected by PPL Electric filing the August 22, 2019 letter. The Company simply was seeking to have an administrative law judge assigned and for the matter to proceed to an evidentiary hearing. If parties or commenters wanted to respond to the letter, they were free to do so. Indeed, NRDC and Sunrun have filed a Preliminary Objection and a Motion for Leave to Reply & Reply in response. Thus, NRDC and Sunrun cannot claim that their substantive rights were affected. Moreover, as seen by the docket in this proceeding, the matter already was referred to OALJ on August 6, 2019. Therefore, to the extent there was any issue with PPL Electric filing the August 22, 2019 letter, it was harmless error.

Fourth, PPL Electric's due process rights⁶ would be violated if the August 22, 2019 letter were stricken and the Company's Petition were dismissed without an evidentiary

⁶ "The Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness." *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (citations omitted). "Among the requirements of due process are notice and an opportunity to be heard on the issues, to be

hearing, as requested by NRDC and Sunrun. In fact, NRDC and Sunrun argued in their Answers that the Company's Petition should be denied or, alternatively, that the issues raised by the Petition be resolved in a statewide rulemaking proceeding. (NRDC Answer, pp. 3, 17-18; Sunrun Answer, p. 4, 17.) This was the first time that these issues were raised in this proceeding. As a result, PPL Electric filed its August 22, 2019 letter formally requesting that the matter be assigned for hearings before an administrative law judge. Now, as evidenced by NRDC and Sunrun's Motion for Leave to Reply & Reply, they have transformed that general position into an affirmative request that the ALJ issue a "preliminary ruling" that dismisses PPL Electric's Petition without an evidentiary hearing.⁷ (Motion, p. 2; Reply, pp. 6-7.) Although NRDC and Sunrun may prefer that PPL Electric have no opportunity to respond to the issues that they raised for the first time in their Answers, PPL Electric is entitled to do so. Thus, if PPL Electric's August 22, 2019 letter were stricken and the matter did not proceed to an evidentiary hearing, the Company would be denied due process because it never had: (1) notice of these issues; and (2) an opportunity to be heard on these issues.

3. Admitted in part and denied in part. Paragraph 3 of NRDC and Sunrun's Preliminary Objection contains legal conclusions to which no response is required. To the extent a response is deemed necessary, PPL Electric denies the same. Furthermore, Paragraph 3 quotes and characterizes 52 Pa. Code § 5.61, which speaks for itself. Therefore, any quotation or characterization thereof is denied. It is admitted that PPL Electric filed its letter on August 22,

apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal." *Id.* (citations omitted).

⁷ As explained in PPL Electric's Answer to the Motion for Leave to Reply & Reply, which is being filed concurrently with this Answer is incorporated herein in its entirety by reference, NRDC and Sunrun's Motion for Leave to Reply & Reply should be denied because: (1) their request for a "preliminary ruling" on the Company's Petition is contrary to long-standing Commission practice, procedure, and law; (2) even if their request for a "preliminary ruling" were properly before the ALJ, which it is not, NRDC and Sunrun utterly fail to establish that they are entitled to such relief; and (3) their request for a "preliminary ruling" would deny the Company due process.

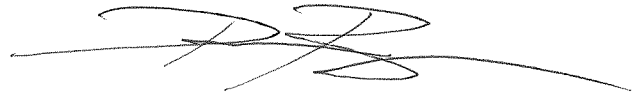
2019. It is denied that the Company's letter is an untimely Reply to parties' Answers. As explained previously, the Company's August 22, 2019 letter should be considered, if anything, a "motion" to transfer the case to an administrative law judge. Moreover, if NRDC and Sunrun were seeking affirmative relief in their Answers,⁸ they should have included a Notice to Plead so that the Company would have known that it needed to file a formal Reply to their Answers. See 52 Pa. Code §§ 5.62-5.63. Therefore, to the extent that NRDC and Sunrun were requesting affirmative relief in their Answers, the Company had no formal notice of their request. Thus, PPL Electric cannot be faulted for filing a response to their July 30, 2019 Answers on August 22, 2019. In further response, PPL Electric incorporates Paragraphs 1 and 2 of Section II.A. *supra*, as if they were fully set forth herein.

⁸ Indeed, as noted in Paragraph 2 of Section II.A., NRDC and Sunrun now have explicitly requested that the ALJ grant them affirmative relief and dismiss PPL Electric's Petition without an evidentiary hearing.

III. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Preliminary Objection filed by the Natural Resources Defense Council and Sunrun, Inc. be denied.

Respectfully submitted,



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Date: September 9, 2019

Counsel for PPL Electric Utilities Corporation

VERIFICATION

I, SALIM SALET, being the Director-Operations at PPL Electric Utilities Corporation, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect PPL Electric Utilities Corporation to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 9/9/2019


Salim Salet