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August 23, 2010

VIA FEDERAL EXPRESS

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Post Office Box 3265, 400 North Street
Harrisburg, PA 17105-3265

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AUG 23 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: Lundes Garrett v. PPL Electric Utilities Corporation; Docket No. F-2009-2106637

Dear Ms. Chiavetta:

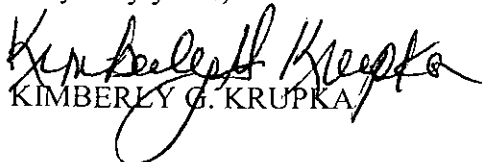
Enclosed for filing in the above-captioned matter are an original and nine (9) copies of Replies of PPL Electric Utilities Corporation to Complainant's Exceptions to the Initial Decision of Administrative Law Judge Susan D. Colwell issued July 26, 2010, along with the attached Certificate of Service.

Pursuant to 52 Pa. Code §1.11, the enclosed document is to be deemed filed on or before August 23, 2010, which is the date it was deposited with an overnight express delivery service as shown on the delivery receipt attached to the mailing envelope.

I am also enclosing an extra copy of PPL's Replies to Complainant's Exceptions. Please time-stamp this copy and return it to my office in the envelope provided.

Thank you for your cooperation in this matter.

Very truly yours,


KIMBERLY G. KRUPKA

KGK:ejm
Enclosures

cc: Administrative Law Judge Susan D. Colwell (w/enc)
Mr. Lundes Garrett (w/enc)
Ms. Kimberly A Galligani (w/ enc); *via email only*

00337325.DOC

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

LUNDES GARRETT,

Complainant,

vs.

PPL ELECTRIC UTILITIES CORPORATION,

Respondent.

COMPLAINT DOCKET

NO. F-2009-2106637

**REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO COMPLAINANT'S
EXCEPTIONS TO THE INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE
SUSAN D. COLWELL ISSUED JULY 26, 2010**

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AUG 23 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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Attorney for PPL Electric Utilities Corporation

Date: August 23, 2010

I. INTRODUCTION

Respondent PPL Electric Utilities Corporation (“PPL”) files the within Replies to Complainant’s Exceptions to the Initial Decision of Administrative Law Judge Susan D. Colwell issued July 26, 2010. PPL respectfully submits that ALJ Colwell correctly dismissed the Complaint of Lundes Garrett based on the substantial testimony of record.

For the reasons more fully set forth below, the Exceptions of Complainant should be denied.

II. REPLIES TO COMPLAINANT’S EXCEPTIONS

1. Complainant’s Exception 1: Complainant excepts on the basis that ALJ Cocheres¹ conducted a telephonic hearing, in accordance with the telephonic hearing notice dated July 13, 2009, as opposed to an in-person hearing.

PPL’s Reply:

ALJ Cocheres properly issued a Hearing Notice in the above-referenced matter which scheduled a Telephonic Hearing Notice for Wednesday, September 16, 2009, at 10:00 AM. In addition, on July 20, 2009, ALJ Cocheres issued a Pre-Hearing Order which again identified the hearing as a Telephonic Hearing. The Pre-Hearing Order directed that requested changes to the hearing date must be submitted in writing no later than five (5) business days prior to the hearing. In addition, page 2 of the Hearing Notice states “although the hearing is being conducted telephonically for the convenience of the parties, it is still a formal proceeding and will be conducted in accordance with the Commission’s Rules of Practice and Procedures.” Despite being provided with advance notice of the hearing being telephonic, and a method by

¹ This matter was originally heard by ALJ Cocheres. Upon ALJ Cocheres’ retirement, the record was transferred to ALJ Colwell for issuance of an Initial Decision and Order.

which to make objections or requests of the ALJ, Complainant make no request for an in-person hearing until the actual date of the hearing.

All evidence of record is that Judge Cocheres did conduct a Telephonic Hearing on September 16, 2009 in accordance with his Hearing Order and Pre-Hearing Order. Moreover, PPL provided Complainant with copies of its Exhibits prior to the Hearing and all parties were able to fully participate through testimony and the presentation of Exhibits. At not time during the hearing did Complainant indicate that he was precluded from providing any testimony or introducing an exhibits due to the nature of the hearing being telephonic. Where the law permits for hearings to be either telephonic or in-person, and insomuch as Complainant had every opportunity to fully present his case, Complainant suffered no prejudice with the Telephonic Hearing. Moreover, Complainant failed to contact the ALJ prior to the scheduled hearing to request an in-person hearing.

2. Complainant's Exception 2: Complainant excepts on the basis that ALJ Cocheres encouraged the parties to engage in settlement talks prior to the commencement of the hearing.

PPL's Reply:

As indicated in ALJ Cocheres' Pre-Hearing Order, it is the policy of the Commission to promote settlement. Accordingly, prior to the commencement of the hearing, ALJ Cocheres provided the parties an opportunity to discuss settlement. All parties agreed to avail themselves of this opportunity. In order to preserve the confidential nature of the settlement discussions and to maintain the impartiality of the Hearing Officer, ALJ Cocheres left the room during the discussions between the parties. As the parties were unable to reach a resolution, ALJ Cocheres conducted a full hearing. The terms of the settlement conference were

kept confidential and were not disclosed to ALJ Cocheres. Accordingly, Complainant suffered no prejudice by discussing a possible settlement with Respondent, PPL.

3. Complainant's Exception 3: Complainant excepts on the basis that PPL provided its Exhibits to Complainant on September 9, 2009, via Federal Express, for receipt on September 10, 2009.

PPL's Reply:

ALJ's Cocheres' Pre-Hearing Order directed the parties to exchange exhibits for receipt five business days before the scheduled hearing. PPL mailed its Exhibits via overnight carrier on September 9, 2009 for delivery on September 10, 2010. The Hearing commenced on September 16, 2009. While this was six (6) days prior to the scheduled hearing, it was only four (4) business days prior to the hearing. As the documents were delivered by Federal Express to Complainant's home, there is no allegation that Complainant did not have an appropriate period of time to review the documents provided by PPL. Even in Complainant's Exceptions, he does not alleged prejudice. Accordingly, while there was no prejudice suffered by Complainant, there was no error in permitting the Exhibits of PPL.

4. Complainant's Exception 4: Complainant excepts on the basis that ALJ Cocheres allowed PPL to present and elicit testimony from PPL's own witness despite PPL not subpoenaing its own witness.

PPL's Reply:

ALJ Cocheres properly permitted Respondent, PPL, to present witnesses on its own behalf. Jennifer Tomel, a customer service representative, and Kevin George, a field investigator, both employed by PPL testified on behalf of PPL. Although the Pre-Hearing Order does set forth a procedure for subpoenaing witnesses, PPL was not required to subpoena its own

witness. Accordingly, the subpoena provisions of the Pennsylvania Code were not applicable. Moreover, the Pre-Hearing Order does not require PPL, or any party, to identify the witnesses prior to the hearing.

5. Complainant's Exception 5: Complainant excepts on the basis that Complainant alleges he proved his case far beyond the preponderance of evidence standard.

PPL's Reply:

The undisputed evidence is clear that Complainant's electric usage varied from year to year and from month to month. The evidence is also undisputed that Complainant has a heat pump (Notes of Testimony (hereinafter "N.T." at 31) within the home. Complainant also testified that he uses an electric heater which he carries with him from room to room to provide heat. (N.T. at 33-35). Moreover, the usage chart included on page 8 of Administrative Law Judge Colwell's Decision reveals that although Complainant usage fluctuates from year to year, Complainant usage also increases in the months of January, February, and March, which correspond with the cold winter months. Finally, Complainant refused to permit Respondent, PPL, to conduct an in-person high bill investigation and denied PPL's repeated attempts to provide a meter test. Accordingly, the ALJ properly found that Complainant failed to meet his burden of proof.

6. Complainant's Exception 6: Complainant excepts on the basis that he has been filing annual Complaints with the Public Utility Commission, and each time the Public Utility Commission finds that Complainant fails to meet his burden.

PPL's Reply:

Complainant's continual filing of Complaints with the Public Utility Commission against PPL does not in and of itself establish any violation of any rule or regulation of the Commission.

7. Complainant's Exception 7: Complainant excepts on the basis that ALJ Cocheres stated at the completion of the hearing he would render a Decision within 90 days, but did not enter a Decision until July 26, 2010.

PPL's Reply:

Although the Decision was not entered in the above matter until July 26, 2010, Complainant suffered no prejudice. During the interim period of time, PPL continued to provide service to Complainant. Moreover, during this time period, Complainant had a substantial overdue balance on his account. PPL did not terminate Complainant or institute any fines or interest on the over due balance. Accordingly, Complainant suffered no prejudice as a result of any delay.


III. CONCLUSION

PPL respectfully requests that the Initial Decision of ALJ Colwell, dated July 26, 2010, be affirmed and made final.

Respectfully submitted,

PPL ELECTRIC UTILITIES CORPORATION

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AUG 23 2010
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BY: 
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Attorney for PPL Electric Utilities Corp.

Dated: August 23, 2010
at Allentown, Pennsylvania

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

LUNDES GARRETT,

Complainant,

vs.

PPL ELECTRIC UTILITIES CORPORATION,

Respondent.

COMPLAINT DOCKET

NO. F-2009-2106637

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AUG 23 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participant(s), listed below, in accordance with the requirements of §1.54 (relating to service by a participant):

LUNDES GARRETT
8 ROSE DRIVE
SAYLORSBURG PA 18353

Dated this the 23rd day of August 2010.

GROSS MCGINLEY, LLP

By:


KIMBERLY G. KRUPKA

I.D. #83071

Attorney for PPL Electric Utilities Corp.

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Allentown, PA 18105-4060

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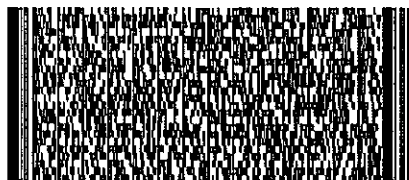
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PA PUBLIC UTILITY COMMISSION
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HARRISBURG, PA 17120

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