MALKAMES LAW OFFICES
509 LINDEN STREET
ALLENTOWN, PA. 18101-1415

WILLIAM G. MALKAMES
MARK MALKAMES
WILLIAM KURT MALKAMES

TELEPHONE (610) 821-8327
FAX (610) 821-5851
E-MAIL: mkoffice@pld.net

October 21, 2011

Pennsylvania Public Utility Commission
Attn: James J. McNulty, Secretary
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: 1-A Realty v. PPL Electric Utilities Corporation
Docket No.: F-2010-2166554 and F-2010-2166976

Dear Mr. McNulty:

Please find enclosed one (1) original and two (2) copies of Reply Brief of Complainant 1-A Realty with respect to the above captioned matter together with a Certificate of Service.

Kindly time-stamp and return one (1) copy of the above mentioned documents in the self addressed stamped envelope for my file.

If you have any questions do not hesitate to contact me.

Very truly yours,

Mark Malkames

MM/jmr
Enclosure(s)
cc: Andrew H. Ralston, Jr., (w/encl.)
1-A Realty, (w/encl.)
Honorable Dennis J. Buckley, by email

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

1-A REALTY,	:	
Complainant,	:	COMPLAINT DOCKET
vs.	:	No. F-2010-2166554
PPL ELECTRIC UTILITIES CORP.	:	
Respondent	:	

1-A REALTY,	:	
Complainant,	:	COMPLAINT DOCKET
vs.	:	No. F-2010-2166976
PPL ELECTRIC UTILITIES CORP.	:	
Respondent	:	

REPLY BRIEF OF COMPLAINANT 1-A REALTY

A. ERRATA

It has been brought to counsel's attention that there are several small errors in the Complainant's principal brief.

1. On page 11, the first line should reference the year 2008 (not 2010) which was when Thompson acknowledged receiving Rule Amendments C-3.

2. On page 11, line 12, the year referenced should be August, 2009 (not August 2011), i.e. Thompson confirmed that her light was disconnected sometime prior to August 28, 2009.

3. On page 6, line 14, reference is made to the testimony of William Mayo that indicates there is a breaker switch on the meter pedestal (each home having a master meter) and stating that there is a separate "meter" that is directly wired to the streetlight on the

outside of the meter pedestal. This should say that there is a separate "breaker" directly wired to the streetlight. Although the testimony is correctly stated in the Brief as transcribed by the Court Reporter, Complainant wishes to note that it is actually a separate "breaker", not a separate "meter" which controls the streetlight (See N.T. I, Page 59)

B. THE RESPONDENT DESCRIBES THE MANUFACTURED HOME COMMUNITY AS A "MOBILE HOME PARK" CONTAINING "DOZENS OF RENTAL UNITS".

The Community is a leased land community. It does not rent units.

C. THE UTILITY STATES IN THE BRIEF THAT "RESPONDING TO COMPLAINTS (FROM PHYLLIS RUTH) ABOUT THE STREETLIGHT" IT WENT TO THE PARK (COMMUNITY) AND DISCOVERED THE ALLEGED FOREIGN LOAD.

This recitation is untrue. As noted in the principal brief, Ruth never filed a complaint. In fact, the utility's own representative acknowledged that the resident "question[ed] whether or not she was receiving a sufficient rent credit for the electricity that her meter was actually registering" (N.T. IV, page 30).

Ruth was more direct. She and her husband sent a letter to the utility on September 18, 2009 notifying the utility that they were being reimbursed for their electric usage; requesting that the meter be put back into their name; and advising the utility that they had the right to say what is attached to "her" meter. In that letter (which was marked as Ruth 2 letter at her trial deposition) she states: "If it helps? You can say I withdrew the complaint? (Tho all I ever did was ask a question about Act 54?))). (Ruth 2)

D. THE UTILITY STATES THAT IT THEREAFTER RECEIVED A CALL FROM A SIMILARLY AFFECTED TENANT, MRS. KAREN THOMPSON "LIKEWISE COMPLAINING ABOUT HER STREETLIGHT".

Again, no reference is made to the portion of the record. Thompson's testimony stands in direct contradiction, Thompson explaining at her deposition that she did not tell the utility that she wanted a streetlight removed from her meter and that all she wanted to know was to have the representative tell her that $10.00 was the charge to her account, and "that would have been the end of it for her" (N.T. II, page 21). The account was again placed in the name of 1-A Realty through the decision of the utility, not the decision of Karen Thompson (N.T. III, page 21).

E. THE UTILITY CONTENDS THAT "DESPITE REPEATED DEMAND", COMPLAINANT HAS FAILED AND REFUSED TO ASSURE PPL THAT IT INTENDS TO KEEP THE CLAIMED STREETLIGHTS PERMANENTLY TURNED OFF AT THE METERS OF RUTH AND THOMPSON.

Again no reference is cited to the record. No alleged repeated demands were made by the utility. Amazingly, the utility did not respond to the notices sent by the Complainant and counsel that the load had been removed. (The only representative of Respondent who addressed this issue testified that he was not even allowed to open correspondence properly addressed to the utility).

It is also disappointing that the utility would reference the Complainant's correction as a "ruse" and then it opine that Complainant intends to reverse its correction as soon as the litigation between the parties is resolved, there being no support in the record for such a claim. The Complainant did acknowledge that they would re-attach the streetlight assuming a favorable determination in these proceedings (N.T. I, pages 57, 58).

F. THE UTILITY OFFERS THAT ITS ACTIVITIES ARE MOTIVATED BY A CONCERN FOR THE "SAFETY AND WELLBEING OF THE RESIDENTS OF THE COMMUNITY".

Again there is no testimony or evidence which was presented in this regard. Respectfully, if the utility was truly concerned about the residents, it would have honored

rather than having ignored the instructions of the residents. It would not have imposed a "solution" that neither the community nor its residents desire or require.

The wiring changeover which occurred (at great expense to the Complainant) only occurred more than after six months after prior written notice to the Residents and their agreement.

Contrary to the utility's self serving claims, the utility will create a hardship for the residents if it is successful with its extension of 1529.1 to the circumstances of this case.

G. THE UTILITY CLAIMS THAT IT HAS ACTED IN ACCORDANCE WITH DIRECTIVES OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION.

Not one case is cited by the utility suggesting that the utility is required to act where it has not received any complaint. Not one case is cited that the utility is required to so proceed where it has received specific direction from the account owner of a desire the account to be listed in the account owner's sole name. Not one case is cited that the utility is required to act where the parties have agreed in advance to the challenged arrangement and where the load is being compensated in full.

H. THERE HAS BEEN NO "WAIVER OF RIGHTS" AS ALLEGED BY THE UTILITY.

Not only is there no evidence of any "waiver of rights" but there has been no evidence that any tenant has sought to assert a right which the Complainant by its conduct, documentary or otherwise has attempted to waive. Implicit in the assertion of a "right" is its purported or intended exercise by the person to whom it accrues, not some third party[1].

For the utility to construe the conduct of the Complainant as "oppressive" under circumstances where the utility is disrespecting the instructions of the residents is disturbing. No one is attempting to take advantage of anyone or to deprive anyone of claimed rights. No

[1] PPL has its own interest in attempting to require the Complainant to open 21 new utility accounts.

one has been harmed, only benefitted. The relationship between these long time residents and the Complainant in this case is illustrated by the voluntary gratuitous testimony offered by Herbert Ruth at his wife's deposition, attesting to the Complainant's operation its community, treating residents fairly and with respect and with their best financial interests at its paramount concern.

I. NEITHER RUTH NOR THOMPSON WERE NOT THREATENED WITH EVICTION AS ALLEGED.

Regarding the notice that was sent to Thompson, Thompson only indicated that she received a notice from the Community regarding her failure to comply with the community rules, not that she had ever been threatened with eviction (N.T. page 17, 18). Of note, the Manufactured Home Community Rights Act requires that all rules be uniformly enforced. 68 P.S. 398.3, 398.4. By not addressing notice of a potential violation to the resident, the Rule loses its enforceability against any resident. 68 P.S. 398.3, 398.4. The Complainant only documented the potential violation by sending notice in compliance with the requirements of the Pennsylvania Manufactured Home Community Rights Act as there are many other residents similarly situated.

The Complainant has also since discovered that this situation has been created by the utility, and not by the residents who agreed to the Rule amendment six months before its effective date.

There is no evidence that the Ruths received any notice from the Complainant.

J. THE UTILITY CITES SELF-SERVING QUESTIONING AS EVIDENCING THE RESIDENT'S "TRUE INTENT" THAT THEY WISH TO HAVE THE STREETLIGHT DISCONNECTED FROM THEIR METER.

The utility unilaterally changed the residents' accounts. It also ignored the requests of both residents that the accounts not be changed. It thereafter entirely disregarded specific written directive both residents sent to the utility demanding that the utility correct the situation which it itself created. Not having accepted those residents, verbal and written, the utility then proceeds to question those instructions in depositions, depositions which respectfully were not needed and should have never been scheduled.

Both residents in their testimony start with the proposition, repeated throughout their testimony, that PPL told them that the Complainant has acted illegally and that PPL is acting according to law. Under those circumstances, what did the utility expect the residents to say in hypothetical deposition questioning? The utility did not question the residents whether they prefer to keep their lights blackened. The utility did not question the residents whether they prefer that Complainant blacken the entire community. The utility did not question whether perhaps the residents wish to incur the expense or installation of individual light posts with required night time illumination (as many manufactured home communities require).

It is a testament to the Complainant that the residents continue to support the Complainant in this case. Both residents have clearly and repeatedly put the utility on notice that they want the utility to correct the accounts, and they once again in their testimony expressed their desire to accept the loads on their accounts.

K. THE UTILITY HAS OFFERED NO CASE LAW HOLDING THAT A TENANT MAY NOT ACCEPT A LOAD.

It has offered no case law that a tenant cannot agree to in writing to accept the load. It has offered no case law suggesting that PPL is statutorily charged with disregarding the specific instruction of the tenants.

L. FOREIGN WIRING V. FOREIGN LOAD

The utility totally fails to offer any legal support that it is charged with investigating foreign wiring (as well as foreign loads). No explanation is provided for its failure to even reasonably communicate with Complainant regarding the Complainant's immediate fix.

CONCLUSION

Respectfully, the statute has been overinterpreted by the utility. The additional expansion of the statute urged beyond Commission decisions renders it no longer recognizable. If the legislature wanted to prohibit all foreign loads, it could have and would have said so simple and in direct terms. The Commission in policy announcements has in fact previously and expressly recognized the interpretation that tenants may accept loads. No decision has revisited, reversed or reinterpreted the Commission's own repeated and express historical interpretations of the statute.

The tortured extension of 1529.1 which the utility suggests should prevail in this case serves no good purpose. The decisions of the BCS must be reserved.

Respectfully submitted,
MALKAMES LAW OFFICES, by

Mark Malkames, Esquire
I.D. No. 38792
Attorney for Complainant
509 Linden Street
Allentown, PA 18101
Phone (610) 821-8327
Fax (610) 821-5851

Dated: October 21, 2011

doc://Mark/Pleadings/Certification of Service/10/21/11(jmr)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

1-A REALTY,	:	
Complainant,	:	COMPLAINT DOCKET
vs.	:	No. F-2010-2166554
PPL ELECTRIC UTILITIES CORP.	:	
Respondent	:	

1-A REALTY,	:	
Complainant,	:	COMPLAINT DOCKET
vs.	:	No. F-2010-2166976
PPL ELECTRIC UTILITIES CORP.	:	
Respondent	:	

CERTIFICATION OF SERVICE

I, Mark Malkames, Esquire, hereby certify that Reply Brief of Complainant 1-A Realty was mailed upon the following as indicated below by First Class Mail on October 21, 2011 (copy of service letter attached) with respect to the above matter:

Gross McGinley
Attn: Andrew H. Ralston, Jr., Esquire
33 South Seventh Street
P.O. Box 4060
Allentown, PA 18105-4060

Respectfully submitted,
MALKAMES LAW OFFICES, by

Mark Malkames, Esquire
I.D. No. 38792
Attorney for Complainant
509 Linden Street
Allentown, PA 18101
Phone (610) 821-8327
Fax (610) 821-5851

Date: October 21, 2011

MALKAMES LAW OFFICES
509 LINDEN STREET
ALLENTOWN, PA 18101-1415

Hasler FIRST-CLASS MAIL
10/21/2011
US POSTAGE $01.88⁰
ZIP 18101
011D10603198

RECEIVED
2011 OCT 24 AM 11:05
PA.P.U.C.
SECRETARY'S BUREAU

Pennsylvania Public Utility Commission
Attn: James J. McNulty, Secretary
P.O. Box 3265
Harrisburg, PA 17105-3265