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WILLIAM G. MALKAMES
MARK MALKAMES
WILLIAM KURT MALKAMES

January 4, 2012

Secretary of the Commission
2nd Floor, Keystone Building
400 North Street
Harrisburg, PA 17105

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JAN - 4 2012

Re: F-2010-2166554
F-2010-2166976

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dear Sir or Madam:

I am enclosing an original and nine (9) copies of Exceptions for filing (20 total copies enclosed, 10 for each docket) with respect to the above captioned matter. I am also enclosing a CD-Rom in Microsoft 2003 format.

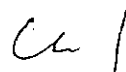
I am serving a copy of the Exceptions on the Office of Special Assistants, 3rd Floor, Keystone Building, 400 North Street, Harrisburg, Pennsylvania as directed by your December 20, 2011 notice.

I am also serving a copy to Attorney Andrew Ralston and Honorable Judge Dennis J. Buckley as parties of record.

I am enclosing a Certification of Service indicating service as required and as indicated.

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

Very truly yours,



Mark Malkames

MM/jmr

By Federal Express

Enclosure(s)

cc: Office of Special Assistants, (w/encl.), by Federal Express
Andrew Ralston, Esq., (w/encl.), by hand delivery and email
Honorable Dennis J. Buckley, (w/encl.), by first class mail and email
William Mayo, (w/encl.), by email only

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doc://Mark/Pleadings/1-A Realty v. PPL Electric Exceptions/1/4/12 (jmr)

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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	:	

EXCEPTIONS OF COMPLAINANT 1-A REALTY TO INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE DENNIS J. BUCKLEY DATED DECEMBER 7, 2011 TRANSMITTED TO COMPLAINANT 1A REALTY ON DECEMBER 20, 2011

AND NOW, comes the Complainant 1-A Realty files the following exceptions to the Administrative Law Judge Initial Decision dated December 7, 2011, served/transmitted December 20, 2011 in reference to the above consolidated appeals and respectfully states as follows:

1. The Administrative Law Judge/Presiding Officer erred in his History, admitting C-8 letter of August 28, 2009 only for limited purpose of reflecting the recollection of Complainant's witness; said document was substantive evidence as it was a response to the letter of August 26, 2009 from the utility to Complainant; in particular, it was Complainant's notification to the utility that the claimed offending foreign load has been removed (Decision, Page 2).

2. The Administrative Law Judge/Presiding Officer erred in Finding of Fact 13 that resident Phyllis Ruth "contacted PPL with a foreign load complaint"; the said resident only contacted the utility to question whether she was receiving a sufficient rent credit for the electricity that her meter was actually registering, as acknowledged even by the utility representative (N.T. August 23, 2011, page 30); Ruth was even more direct in her testimony that she did not lodge a complaint when she advised the utility by her written correspondence "If it helps? You can say I withdrew the Complaint? Tho all I ever did was ask a question about Act 54" (Ruth 2) (Decision, page 5).

3. The Administrative Law Judge/Presiding Officer erred in Finding of Fact 15 that Karen Thompson contacted the utility "with a foreign load complaint"; no reference is made to any portion of the record lodging any such alleged complaint; in fact, the resident's testimony stands in direct contradiction, the resident explaining at her deposition that she did not tell the utility that she wanted the 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. Thompson 21) (Decision, page 25).

4. The Administrative Law Judge/Presiding Officer erred in Finding of Fact 19 that the Complainant disconnected the streetlights at the breaker boxes of Mrs. Ruth and Ms. Thompson "at some point approximate to January, 2011"; those lights were disconnected as acknowledged by the utility's own representative who testified that the Complainant had filed notices indicating that the streetlights had been removed from the load (N.T. August 23, 2011, pages 50-52); the removal of the load was also stipulated to at the first hearing (N.T. April 26, 2011, page 47, 48); the utility did not rebut the Complainant's direct (unobjected to) testimony indicating that the loads had been removed as of August 28, 2009 (N.T. April 26, 2011, pages 49, 50); the utility's own testimony was entirely evasive, the utility representative testifying that

he was not "allowed to open mail" received from the Complainant regarding this very issue, but the representative acknowledging the receipt of the August 29, 2009 notices (N.T. August 23, 2011, pages 41-44) (Decision, page 6).

5. The Administrative Law Judge/Presiding Officer erred in Finding of Fact 20 that "PPL subsequently refused request from Mrs. Ruth and Ms. Thompson to have the electric accounts ... placed back in their names" where neither resident ever requested that the accounts be taken out of their individual names in the first instance (Decision, page 6).

6. The Administrative Law Judge/Presiding Officer erred in his decision that the units at issue were "not individually metered", rejecting interpretation of the statute as written (1529.1) in favor of internal PUC decision (Decision, page 8).

7. The Administrative Law Judge/Presiding Officer erred in his decision by failing to interpret individual metering as a matter of physical fact, instead relying on a changing PUC interpretation of the statute rendering the express language of the statute meaningless (Decision, page 8).

8. The Administrative Law Judge/Presiding Officer erred in his decision in failing to follow precedent of the Public Utility Commission, more particularly policy statement L-980137, where the Commission initially recognized that a dwelling unit is considered to be individually metered where only a minimal load is registered by a unit meter, the Commission noting, previously recognizing that allowing minimal foreign loads to be recorded "is not contrary to the intent of the statute" the Commission also noting that this policy was/is consistent with past decisions of the Commission permitting a tenant to accept financial responsibility where a minimal foreign load has been disclosed (Decision, page 7-9).

9. The Administrative Law Judge/Presiding Officer erred in his decision in failing to follow Commission statement L-980137 expressly holding that a utility is not required to place

an account for an individually metered unit in the name of the owner where the tenant has notified the utility to the contrary, the Commission expressly recognizing and interpreting that 1529.1(b) is superseded by the tenants notifying the utility of the willingness to accept financial responsibility for a utility account (Decision, page 7-9).

10. The Administrative Law Judge/Presiding Officer erred in his decision in failing to follow Commission Order entered on August 12, 1998, adopting a new rule making for foreign loads at Docket L-00990142 (withdrawing the proposed policy statement found at L-00980137), noting that the proposed new rule making permits under certain circumstances a de minimis foreign load, most notably where there is some prior disclosure and consent of the Tenant. See also Ward v. PPL Utilities, Inc. C-00992784 Opinion and Order August 31, 2000 (Decision, page 8).

11. The Administrative Law Judge/Presiding Officer erred in his decision finding that the residents and the Complainant established a private agreement intended to trump the law; the agreement is expressly permitted by the statute, Section 1529.1 and by historical interpretations of the PUC; the arrangement does not and was not intended to evade the law but rather to recognize that the statute permits the arrangement which has been adopted (Decision, page 8).

12. The Administrative Law Judge/Presiding Officer erred in his decision that (based upon an implied argument of the utility) in wiring individual residential meters to a common use facility, the Complainant created a foreign load situation comprising the individually metered status of the resident where there was no evidence to support this conclusion (Decision, page 9).

13. The Administrative Law Judge/Presiding Officer erred in his decision holding that the disconnection of the load at the breaker box has not removed the offending load, where

there was no evidence that the load has not been removed; in fact, to the contrary, the utility stipulated that upon disconnection of the circuit at the breaker there is no electricity going to the resident's meter (N.T. April 26, 2011, page 46), (Decision, page 10).

14. The Administrative Law Judge/Presiding Officer erred in his decision by holding that "the wiring for the streetlights must be removed completely from the resident's meters" and the lights be metered separately inasmuch as there is no issue regarding the obligation for the Complainant to provide lighting before the PUC and further, the issue before the PUC by statute being the existence of a claimed foreign load, not the existence of claimed foreign wiring (which the utility or the PUC believe could result in the potential imposition of a load) (Decision, page 9-10).

15. The Administrative Law Judge/Presiding Officer erred in his decision in concluding that when a utility discovers a foreign load, it must then place a tenant's account in the landlord's name, cases of the PUC holding only where a foreign load "dispute" occurs may a utility pursue a collection of any unpaid amounts from the landlord and not the tenant, and no such "dispute" being present in this case. (Burton v. Peco Energy, F-00339578) (Decision, page 10).

16. The Administrative Law Judge/Presiding Officer erred in his decision and in number 2 of his Order directing the utility to transfer electric accounts for various tenants not involved with these proceedings to the name of the Complainant, where this was not an issue raised in any appeal before the Administrative Law Judge/Presiding Officer, and where the Administrative Law Judge/Presiding Officer has exceeded the scope of the issues raised in the appeals and there being no other claims for relief in these proceeding (Decision, page 11).

17. The Administrative Law Judge/Presiding Officer erred in his Order that Complainant needs to "permanently, completely and safely correct all claimed foreign loads",

said Order being ultra vires and further, incapable of objective compliance, the decision as to whether loads have "permanently, completely and safely" corrected to thus presumably reside with the utility as the sole and final arbiter (Decision, page 11).

18. The Administrative Law Judge/Presiding Officer erred in failing to sustain the appeals of the Complainant that the accounts should have been placed back in the name of the affected tenants (Decision, page 10, 11).

19. The Administrative Law Judge/Presiding Officer erred in failing to recognize a de minimis exception (Decision, page 10, 11)

20. The Administrative Law Judge/Presiding Officer failed to recognize the written agreement of the affected residents to accept the minimal load and their reimbursement for the load registered (Decision, page 10, 11).

Respectfully submitted,
MALKAMES LAW OFFICES, by



Mark Malkames, Esquire
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Attorney for Complainant
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Dated: January 4, 2012

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SECRETARY'S BUREAU

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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 on January 4, 2012 (copy of service letter attached) with respect to the above matter:

Secretary of the Commission
2nd Floor, Keystone Building
400 North Street
Harrisburg, PA 17105
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Gross McGinley
Attn: Andrew H. Ralston, Jr., Esquire
33 South Seventh Street
P.O. Box 4060
Allentown, PA 18105-4060
By HAND DELIVERY AND EMAIL

Office of Special Assistants
3rd Floor, Keystone Building
400 North Street
Harrisburg, PA 17105
BY FEDERAL EXPRESS

Honorable Dennis J. Buckley
Administrative Law Judge
P.O. Box 3265
Harrisburg, PA 17105
BY FIRST CLASS MAIL AND EMAIL

Respectfully submitted,
MALKAMES LAW OFFICES, by



Mark Malkames, Esquire
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Date: January 4, 2012

From: (610) 821-8327
Mark Malkames
MALKAMES LAW OFFICE
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Origin ID: ABEA



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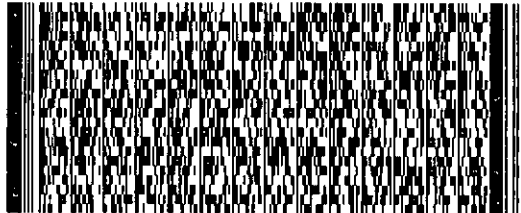
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